# THE FREEMAN

IDEAS ON LIBERTY

**The Rifle by the Door**

**The Bill of Rights and Moral Philosophy**

**The "Fair Trade" Myth**

**Do Seat Belt Laws Work?**

JULY 1992

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# THE FREEMAN

IDEAS ON LIBERTY


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IDEAS ON LIBERTY

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PERSPECTIVE

## Strength Springs from Strong Ideas

The Foundation for Economic Education is a "home" for the friends of freedom everywhere. FEE's spirit is uplifting, reassuring, and contagious, inspiring the creation of numerous similar organizations at home and abroad. F. A. Harper founded *The Institute for Humane Studies*; Kenneth Ryker created the *Freedom Education Center* in Cedar Hill, Texas; and Ralph Smeed, the *Center for Market Alternatives* in Boise, Idaho. In London, Antony Fisher founded the *Institute for Economic Affairs*; in Buenos Aires, Alberto Benegas Lynch established the Centro de Estudios sobre la Libertad; and in Guatemala City, Manuel F. Ayau built the magnificent Universidad Francisco Marroquín. FEE's dedication to the ideals of liberty has been and continues to be an inspiration that offers great hope for the future and new courage and confidence.

We honor Leonard Read who created this home for the friends of freedom. He knew that freedom means the pursuit of our own goals, provided we do not deprive others of their freedom to pursue theirs. His goal was peace in all social relations.

FEE now is 46 years old. Although it is the oldest institution of learning dedicated to the study of freedom in all its ramifications, it is as vibrant with life and energy today as it was at its inception. Now, as in the past, it heeds the words of George Washington: "Let us raise a standard to which the wise and honest can repair. The rest is in the hands of God."

—HANS F. SENNHOLZ
President

## Will More Government Improve Health Care?

We are about to *do something, anything* about health care supply.

The impetus comes from the charge that we spend more on health care but compare unfavorably with other countries in terms of life expectancy, infant mortality, and efforts to lower various disease rates. This supposedly shows that our health care supply is both more costly and defective.



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But the cause may lie on the demand, not the supply side. Maybe we spend more on health care because we have higher demands due to factors such as high crime rates, drug use, and lifestyles.

Further, it is possible we spend more on health simply because we are richer. If we demand proportionately more health care as incomes rise, our higher costs might be due to our preferences, not supply-side inadequacy.

Would you conclude that because we spend more on recreation than some other country that our recreation industry is bad and needs reform?

Simple connections between spending and health are tenuous and worthy of better analysis before we charge off and change the system or throw more money at it. The evidence suggests that this will make matters worse.

* * * * *

Instead of wringing our hands over the 35 million who do not have health insurance, we should look at getting rid of the ways the government has raised the cost of insurance and priced some out of the market.

A major cause of high insurance premiums is the mandated benefits required by most states. For example, in Washington State, most health insurance policies must cover alcohol and drug abuse and the services of chiropractors, occupational therapists, physical therapists, speech therapists, podiatrists, and optometrists. . . .

This is how special interest groups get their services included in health benefits, thus helping their business and spreading the cost to everyone.

Why not include economists, too?

For $100 I would be glad to give you advice that might improve your economic health. And you would be more inclined to buy my services, even if useless, if insurance (other people) paid 80 to 100 percent.

All this points out a real problem with health insurance. Insurance is supposed to protect people from events not their fault. When it pays for a discretionary service, it is no longer insurance but welfare, and when some choose it — need it or not — this raises both health and insurance costs.

* * * * *

If the price of bread is $2 in one country and $1 in another, you might conclude that bread is "cheaper" in the second country.

But then suppose you discovered you had to wait for three hours to get the $1 bread, as Russians do. Is the $1 bread still "cheaper"?

Similarly, the statistic that Canadian per capita health care costs are only 75 percent of the U.S.'s is used to conclude the Canadian system is "cheaper" and we should adopt it.

But think of the waiting lines for many medical services in Canada: 24 weeks for coronary bypass, 16 weeks for tubal ligation, 14 weeks for tonsillectomy, 16 weeks for hysterectomy, 33 weeks for septal surgery, and so on.

As a result, many sick Canadians come to the U.S. for treatment and others die waiting.

Do you still think health care is "cheaper" in Canada?

* * * * *

When you have an industry that is full of supply-side rigidities, monopoly, and bureaucracy, most of which are due to government regulation, throwing more money at it will simply raise prices and reduce output. Health costs shot up after Medicare and Medicaid, and the rise in real output slowed or declined.

As Nobel laureate Milton Friedman recently observed: "The U.S. medical system has become in large part a socialist enterprise. Why should we be any better at socialism than the Soviets?"

—JOHN T. WENDERS, from a column in the Moscow (Idaho)/Pullman (Washington) *Daily News*



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THE FREEMAN
IDEAS ON LIBERTY

# Corporations at Stake

by Douglas J. Den Uyl

In recent years the term "stakeholder" has been introduced into the language of business ethics. It is meant to sound like, and to replace, the traditional term "stockholder" in dealing with questions of corporate responsibility. Corporations now are said to be primarily obligated to their stakeholders, rather than to their stockholders.

Originally corporate managers were seen as primarily accountable to stockholders. Indeed, they were thought of as the stockholders' fiduciaries. Replacing "stockholder" with "stakeholder" undermines this fiduciary relationship. Thus, the last vestige of *private* contractual responsibility is also undermined, making obligation a public affair open to "public" control.

According to an article by Anthony F. Buono and Lawrence T. Nichols in a popular business ethics text, a corporate stakeholder is "any identifiable group or individual who can affect or is affected by organizational performance in terms of its products, policies, and work processes."[1] By this rather vague definition, everyone is a stakeholder of virtually every corporation. Thus, once the proponents of the "stakeholder" terminology have made it difficult to think of corporations as private institutions, they try to draw a distinction between *primary* stakeholders and others.

*Professor Den Uyl teaches philosophy at Bellarmine College, Louisville, Kentucky.*

"Primary stakeholders" are those groups needed for the corporation's "survival" (e.g., consumers, labor, and management). But this distinction only indicates which groups are being given favored status. There is no nonarbitrary way to discriminate between primary and other sorts of stakeholders, since under the right circumstances any stakeholder group could threaten a corporation's survival.

## The "Stakeholder" and the Marketplace

The central difference between the stockholder theory and the stakeholder theory does not, however, rest on realizing that there will be fewer stockholders than "stakeholders." It is rather that the stockholder theory is oriented toward markets, while the stakeholder theory is not.

As Buono and Nichols put it, the stockholder approach "assumes that the interactions between business organizations and the different groups affected by their operations (employees, consumers, suppliers) are most effectively structured as marketplace activities."[2] In one sentence we have the crux of what is at issue here—the private enterprise system versus its socialistic alternatives. For if what is central to the "old" stockholder concept is that business relations should proceed

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along market lines, then the "new" concept plans to replace the market with something else.

And why should we abandon the market in favor of the stakeholder theory? Buono and Nichols offer four reasons:

1. The stockholder model has failed to deal adequately with contemporary societal problems and the true complexities of economic transactions and interactions.

2. It is in the long-term interest of business to take a broader view of its responsibilities. If business does not become accountable for its actions on its own, growing stakeholder pressures will ensure government-imposed accountability.

3. Understanding and satisfying the needs of stakeholders is important to the well-being of the firm. . . . In today's highly competitive economic and social environment, no important stakeholder can be ignored.

4. The stakeholder model is in keeping with our notions of fairness. Employees, consumers, communities, etc., are not just instruments for enriching stockholders.[3]

How good are these reasons? The first is either false or begs the question.

It is false if it claims that businesses don't pay attention to their social environment, because businesses won't survive if they ignore what is going on around them. It is also false if it claims that the stockholder view presented itself as a complete theory of the economic or social relations of the firm. The stockholder model was about establishing primary management responsibility and using market processes to allocate resources. It wasn't designed to list all the interest groups a firm might confront or impact.

The first reason begs the question if it implies that the stockholder view does not easily accommodate nonmarket alternatives or broad public obligations. Of course it doesn't, but whether it should is precisely what is at issue.

The second reason is equivalent to a threat. If businesses don't behave, "growing stakeholder pressures" will lead the government to impose "accountability." A business's property rights and privacy are to be sacrificed to bullying interest groups.

The second reason also can be read as a prediction of what will happen "if business does not become accountable." But if that is so, nothing is being justified, and there is no reason to abandon advocacy of the market—any more than there would be to abandon the rights of the accused in the face of a lynch mob just because someone predicted what the mob might do.

The third reason assumes that the stockholder model focuses less on business competitiveness and survival than does the stakeholder model. This is obviously false. If businesses are having trouble being competitive, it probably isn't because they have failed to consider the groups with whom they interact. It may, however, be that they are not particularly adept at nonmarket strategies, at courting groups who have the ear of regulators, or in appeasing others who oppose the market. (And if a business were good at such things, it is by no means clear why we should want it to be!) Indeed, competitive disadvantages may result from having to cater to groups or forces that contribute nothing to successful market activity.

The fourth reason is the only one appealing to ethics. But it depends on the acceptance of "our notions of fairness." Even if we accept what is implied about fairness in this fourth reason, it could just as well be used to claim that businesses cannot be used as instruments for some stakeholder's conception of the social good. Businesses, in other words, could be said to have rights to property and privacy independent of any demands made by stakeholders.

In any case, businesses don't turn employees, consumers, and communities into "instruments" any more than shoppers turn a businessman into an "instrument" when they buy his product. Mutually beneficial trade hardly qualifies as "instrumentalizing" conduct, unless one has concluded that market transactions are inherently such. But if that were so, we would be back to the problem of begging the question.

Moreover, the stockholder theory doesn't say that the managers' *only* conceivable obligations are to stockholders, but rather that their *primary* obligation is to them because the stockholders, in effect, have hired the managers to serve their interests. Such a relationship is tangible and direct. Contrast that with the amorphous set of obligations to anyone and everyone the stakeholder theory is likely to generate. The stakeholder theory, as a consequence, will issue in actions according to

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the views of those who are the most vocal or politically savvy.

In short, there are no compelling reasons to adopt the stakeholder view and plenty of good reasons *not* to.

## No Commitment, No Stake

In the end it must be noted that most groups considered to be "stakeholders" have no stake in corporations at all. With the possible exception of employees, stakeholder groups have no interest in the well-being of any *particular* corporation. True, they may have an interest in how corporations affect them, but to have a stake in something is to care about its prospects, as one might when investing in a firm. Whether the "good" the stakeholder group wants is provided by this or that corporation (or the state) doesn't matter to them; whether the "bad" it complains of is alleviated by this or that corporation (or the state) also doesn't matter. Whether a *given* corporation is succeeding in the market is of no concern to these groups because they have made no commitment to it. Their perspective is strictly societal.

To actually have a stake by investing in a corporation would be an act of *private* enterprise and *private* interest—something stakeholding, by definition, opposes. For it would contradict the spirit of stakeholding to invest in a corporation even as a vehicle for protest, since there would be no grounds in stakeholder theory for the corporation to pay more attention to the stakeholders as stockholders than any other group the stakeholders may claim to represent.

The issue, then, is not semantic, nor is it that the term "stakeholder" carries with it tacit implications. We have seen that the implications, once appreciated, are all out front. The issue is that this new use of language is being pushed by those with an anti-market message.

Business people are especially vulnerable to such verbal manipulations and may therefore fail to see all the implications of the substitution. In an age of competition from a widening variety of sources, expanding markets, and increased diversity in employment populations, businesses may feel they are being hit from all sides. It is easy, therefore, to insert a term like "stakeholder" into the business vocabulary because it seems to capture the feeling of having to concern oneself with multiple points of impact. Yet we shouldn't let the feeling cloud our judgment. Those speaking loudest about obligations to stakeholders are not innocent purveyors of linguistic aid. For when the term "corporate stakeholder" is correctly used, the only true stakeholders are stockholders. □

1. Anthony F. Buono and Lawrence T. Nichols, "Stockholder and Stakeholder Interpretations of Business' Social Role," in *Business Ethics*, edited by W. Michael Hoffman and Jennifer Mills Moore (New York: McGraw-Hill, 1990), p. 171.
2. *Ibid.*
3. *Ibid.*, pp. 174-75.

# Capital Accumulation Benefits Everyone

IDEAS ON LIBERTY

A man who criticizes the conduct of business affairs and pretends to know better methods for the provision of the consumers is just an idle babbler. If he thinks that his own designs are better, why does he not try them himself? There are in this country always capitalists in search of a profitable investment of their funds who are ready to provide the capital required for any reasonable innovation. The public is always eager to buy what is better or cheaper or better and cheaper. What counts in the market is not fantastic reveries, but doing. It was not talking that made the "tycoons" rich, but service to the customers . . . .

Under capitalism the acquisitiveness of the individual businessman benefits not only himself but also all other people. There is a reciprocal relation between his acquiring wealth by serving the consumers and accumulating capital and the improvement of the standard of living of the wage-earners who form the majority of the consumers. The masses are in their capacity both as wage-earners and as consumers interested in the flowering of business. This is what the old liberals had in mind when they declared that in the market economy there prevails a harmony of the true interests of all groups of the population.

— Ludwig von Mises
"The Economic Foundations of Freedom"

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# The Woman Who Discovered Private Property

by William Holtz

The final European Communist regime to collapse of its own weight was in Albania, a country, someone has said, that served to demonstrate how much government could be packed into a tiny space. Sadly enough, the internal repression necessary to maintain this regime had enslaved once more a people who had been struggling for centuries for freedom from external domination—by the Ottoman Turks, the Serbs, the Montenegrins, the Greeks, and finally the Italians. The most backward of European nations even before its seizure by Hoxha's partisans at the end of World War II, since then Albania had fallen ever farther behind the modern world as its historically grounded xenophobia was reinforced by a reactionary Stalinism that cut it off even from its nominal compatriots in the Communist bloc. Now Albania is again open to Americans, although these must still travel in supervised tour groups.

One of the first Americans to travel extensively in pre-Communist Albania and to take an intelligent interest in its problems was Rose Wilder Lane (1886-1968), whose *The Peaks of Shala* (1923) documents her visit to some of that country's remotest mountain regions. Lane was also the author of a classic handbook of libertarian thought, *The Discovery of Freedom* (1943). The two are not directly connected, although *The Discovery of Freedom* was in a way the culmination of a process of discovery that began when she went to Europe in the 1920s as a freelance writer.

*Professor Holtz, who teaches in the Department of English, University of Missouri-Columbia, is writing a biography of Rose Wilder Lane.*

Lane carried with her an essentially unexamined baggage of parlor-socialist ideas, common among writers and intellectuals of the time and attached to the historical spectacle of the developing Soviet Union. Her experience in Europe and in the Caucasus would lead her to question these ideas; her experience in her own country in the 1930s would lead her to rebel against them; and *The Discovery of Freedom* would be a distillation of her thought and experience.

In the mountains of Albania, Lane had one of her earliest practical encounters with the implications of personal freedom. There she met a woman who, in contravention of all tradition and teaching in her society, had discovered private property.

By chapter six of *The Peaks of Shala*, Lane had brought herself and her readers deep into the mountains of northern Albania, where in scattered and isolated villages she found a primitive yet noble tribal society, generous and courteous to guests but locked in blood feuds with neighboring tribes under the Law of Lec, which dated from Alexander the Great. She estimated that, except for their rifles, they were essentially living in the eighth century. The tribal leaders were much interested in her reports from the outside world, which she tried to interpret for them as best she could. But in one village Lane found a problem beyond her powers of explanation, as the village elders asked how they might settle a woman's revolutionary claim to the fruits of her own labor. All she wanted, this woman said, was justice.

She told us with a calm precision; none of her people's rhetorical flourishes. Even through the

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barrier of language I could see that she was stating her case as a lawyer might who was not addressing a jury.

She had been married five years; she was twenty-one years old. She had two children—boys. While she was married her husband had built a house. It was a large house; two rooms. She had helped her husband build that house. With her own hands she had laid the slate on the roof. She liked that house. She had lived in it four years. Now her husband had been killed by the Serbs and she wanted to keep that house. She wanted to live in it alone, with her two children. . . .

Her husband's brother, head of the family now, had taken it. He was living in it with his wife and children and brothers and cousins and—I forget exactly; seventeen of them in all. The family, which comprised all the village at the foot of the slope on which we stood, had decided that the house should be used for them. But she would not do it. She wanted that house all for herself; she said again that it was her house. Until she got that house nothing would content her or keep her silent.

## "I Want My House!"

"But where do you suppose she got the idea?" Lane asked her interpreter. "Heaven knows," he replied. "Who can tell what women will think of?"

Later that evening, the woman brought her appeal to a gathering of the tribal elders. "Undoubtedly we were among the most courteous people in the world," Lane wrote, "but the next moment that idea was completely upset, for out of the darkness walked that rebel woman who believes in private property."

She came quite calmly into the circle of the firelight, her beautiful hands low on her thighs, below the wide, silver-shining marriage belt, the blue beads twinkling at the ends of the long black braids of her hair, her chin up, and a light of battle in her eyes. . . .

"When am I going to get my house?" said the woman. She stood there superb, holding that question like a bone above a mob of starving dogs, and they rose at it.

I have never seen such pandemonium. Three chiefs spoke at once, snarling; they were on their feet; it was like a picture by Jan Steen changed into the wildest of futurist canvases. I expected them to fly at one another's throats, after the words that they hurled at each other like spears. I expected them to strike the woman, so violently did they thrust their faces close to hers, clenching quivering fists on the hilts of the knives in their sashes. She stamped her foot, her lips curled back like a dog's from her fine, gleaming teeth, and she stood her ground, flashing back at them words that seemed poisoned by the venom in her eyes. "My house!" she repeated, and, "I want my house!"

As the argument died down for a moment, Lane asked for an explanation from one of the elders. "Who can say what the avalanche wants?" replied the chief contemptuously.

"She would break our village into pieces. She has no respect for wisdom or custom. She says that a house is her house; she is a widow with two sons, and she demands the house in which she lived with her husband. She wishes to take a house from the tribe and keep it for herself. Have the mountains seen such a thing since a hundred hundred years before the Turks came? She is *gogoli* [insane]."

"I helped to build that house," said the woman. "With my own hands I laid the roof upon it. It is my house. I will not give up my house."

"My pen spilled ink on my excited hands as I tried to capture their words in shorthand," Lane wrote. "I was seeing, actually seeing with my own eyes, the invention of private property!"

Then the oldest man . . . obviously the chief of chiefs—appealed to me.

"In your country, what would you do with such a woman?" And I perceived that I was obliged to explain to this circle of eager listeners a system of social and economic life of which they had never dreamed, of which they knew as little as we know of the year 2900.

Rose Wilder Lane tried to explain not merely the ownership of houses, but of land, and of property held for rents and investment, as well as the notion of hired labor and taxes paid to government. And failed, as she could see when another chief rose to make a passionate speech that convinced everyone but the complaining woman:

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"Such things can never be. Even a child knows that it would be foolish to own a house in which he did not live. Of what use is a house, except to live in? As it is, each man has the house in which he lives, and there are houses for all, and they belong to the tribe that built them. It is impossible that a man can own a house. It is not the nature of men to own houses, and we will never do it, for the nature of man is always the same. It is the same today as it was before the Romans came, and it will always be the same. And no man will ever own a house."

"Glory to your lips!" they said to him. "It is so."

The woman, who had been sitting quietly listening to this, now rose and very quietly, without saying farewell, slipped out of the firelight, and in a moment, by the sound of the closing door, I knew she had left the house. But there was something about my last glimpse of her back that makes me believe she is still clamoring for her house, and will be until long after her baby sons are grown and married. Unless she gets it sooner.

COURTESY OF ROGER MacBRIDE

***Rose Wilder Lane, taken at about the time she first visited Albania.***

What Lane had encountered in this Albanian village was, of course, a primitive communism, the kind with a small c. The big C variety she would encounter soon enough, as her travels took her to Georgia, Armenia, and Azerbaijan during the time that these ancient nations were being absorbed into the growing Soviet Union. There she encountered the well-intentioned, blundering Soviet bureaucrats disrupting centuries-old agricultural practices with confiscations, allocations, and taxes on production that reduced some peasants to a despairing certainty of starvation. What was claimed as progress was really regress, she concluded; and she returned to the United States with her socialist opinions badly tarnished.

When in the 1930s she made a similar tour of the farms of her own Midwest and observed the New Deal farm programs in place, she found a familiar insertion of the hand of government between the worker and the produce of his labor. The result was a train of thought that finally produced *The Discovery of Freedom*, the subtitle of which told the real story: *Man's Struggle Against Authority*.

In the long course of history, she argued, the insight into the absolute validity of personal freedom and personal responsibility was only an occasional glimmer in a dark chronicle of submission to authority. Its most promising flowering had been in the founding of the American republic, but its essence lay in the assertion of the individual human will. Which might happen anywhere, even in the medieval setting of an Albanian village in 1921, in the heart of a woman who had discovered private property.

Lane retained her love for Albania, living there for a year in 1926-27 even as she saw it sinking under Italian influence. She informally adopted the 12-year-old boy who was her guide and interpreter on the first mountain trip. She supported him through his studies at Cambridge and stood as godmother to his family after he married, even though she was never able to return to visit them. When this young man was interned, first by the Italians during World War II and then by the Communists after, she was able to provide clandestine support to his family, some of whom have now made their way to the United States. Among those Albanians who remain behind, working to build a free society in place of the most recent tyranny, are doubtless the descendants of that rebellious woman who had insisted on the right to keep what she had worked to build. □

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# Mud Farming and Political Extortion

by Richard B. Coffman

William Faulkner's comic novel, *The Reivers*, contains an amusing episode that raises interesting questions about entrepreneurs and exploitation. The story is set in the rural South in the early days of the century, when roads were primitive dirt tracks and automobiles still a novelty. During an epic cross-country car trip, Faulkner's heroes run afoul of a "mud farmer." By night he plows up a muddy stretch of road. By day he waits at the roadside with his mules to tow cars through the mud for an exorbitant fee. Faulkner's heroes make a valiant effort to push and shove their car through the mud hole, but in the end it defeats them, and they escape only by hiring the mud farmer to tow them out.

From a social point of view, mud farming is clearly an undesirable line of business. The mud farmer uses up valuable resources (mule time and his own time) to manufacture a road hazard, and then uses up more of the same resources to tow cars through the mud. This is a very wasteful activity. It is also highly profitable.

This seems to contradict the "invisible hand" argument of Adam Smith. Back in 1776, Smith argued that the invisible hand of competition would force private profit-seekers to work for the general interest. Firms would survive under market competition only if they made products consumers wanted, and made them cheaply and efficiently. But consumers certainly don't want mud holes. Is it realistic of Faulkner to contend that the profit motive encourages their production? Which is the better model: Smith's theory of the entrepreneur as unwitting benefactor of the public, or Faulkner's theory of the entrepreneur as exploiter?

Upon closer analysis, Faulkner's mud farmer is not a typical entrepreneur, but is an oddity who survives and profits only because of a very unusual set of property rights.

Consider how the story would change if the rights to the road were owned by a government that used the full police powers of the state to enforce its rights and protect its property. Clearly, plowing up the public roads would be illegal. If someone tried mud farming, both he and the road would be placed under surveillance, and he'd be prosecuted if apprehended. There would be very little mud farming. This, of course, is the usual case in the United States, where governments own and protect the public roads.

Now consider the opposite, where the farmer owns the road as private property. He would find mud farming a very expensive way to force travelers to pay for using his road. A toll gate would be a cheaper way to collect revenue. And rather than creating road hazards, the owner probably would find it in his interest to improve the road so more people would use it. That is what happened in the early United States, when toll roads were common.

Faulkner's mud farmer operates in a situation where property rights are vague and poorly enforced. The road in the story appears to be a public right-of-way, which means anyone has a right to travel on it. But it really belongs to no one, and government isn't vigilant about protecting travelers' rights.

Of course, if a farmer tried to treat the road as his private property and set up a toll gate, he soon would be stopped by the police. Plowing the right-of-way is also illegal, but if the farmer sneaks out at night and plows the road, he isn't likely to get caught. Thus mud farming arises as a means for an entrepreneur to charge travelers for using property he doesn't own, but can partly appropriate for his own benefit.

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## The Importance of Property Rights

The lesson to be drawn from Faulkner's story is that clear, well-defined, enforceable property rights are important. The "invisible hand" fumbles when property rights are vague or unenforceable. Poorly designed property rights can encourage entrepreneurs to undertake wasteful economic activities. For example, entrepreneurs in the old West wastefully hunted the buffalo almost to extinction because it was a common property resource, belonging to everyone and to no one. On the other hand, cattle that today graze the same range are private property and thus are carefully managed by ranchers.

Some "entrepreneurs" will find crime an attractive economic activity when property rights are costly to enforce and protect. Protection rackets are similar to Faulkner's mud farming. A criminal puts together a team of toughs whose manner and appearance advertise their capacity for violence. The team burns out a few small businesses or roughs up some owners. Having established a credible threat, the gang leader then sells "protection" to those who know they might be the next victims.

Protection rackets are most successful in poor, urban areas where business owners cannot count on the police to protect and enforce their property rights. In contrast, anyone trying to set up a protection racket in a wealthy suburb would probably find the law coming down on him like a ton of bricks. Secure property rights in the wealthy suburb discourage people from entering the socially wasteful business of protection.

Activities similar to protection rackets also occur in political systems. Ideally a nation's constitution would protect property rights. In practice, though, modern governments have tremendous power to violate private property by imposing regulations and taxes. Unscrupulous politicians can use this power to extort money from groups and individuals by threatening to tax or regulate them.

Emory University law professor Fred S. McChesney says such extortion has become a regular feature of the American political landscape.* In California the practice is so entrenched that it has its own vocabulary. The terms "milker bills" and "juice bills" are used to describe bills introduced for the hidden purpose of milking or squeezing private parties for payments.

Professor McChesney says the practice is also common at the Federal level. For example, beer brewers worry about Congressional power to raise Federal beer taxes, so they routinely invite key members of tax committees to make paid appearances at trade association meetings. Brewers feel this "protection" money has helped keep the beer tax at the same level since the Korean War.

Of course, politicians sometimes have to show their muscle to make their threats credible. Several years ago, Congress ordered the Federal Trade Commission to impose costly warranty regulations on used-car dealers. After the dealers raised their campaign contributions to hundreds of members of Congress, Congress ordered the FTC to rescind the regulations.

Tax reform time is bonus time for members of Congressional tax committees. Campaign contributions more than double when tax reform is in the air. Everyone knows that they can be hit with new taxes when the whole system is on the table. Those who have not bought friends on the tax committees may feel especially vulnerable. Politicians aren't shy about bringing the facts of life to the attention of private parties. They aggressively solicit contributions as soon as tax reform is on the horizon. During the tax reform of 1985-86, lobbyists reported that politicians made the greatest demands ever seen in a nonelection year.

Just like mud farming, political extortion wastes resources. Politicians use up time and energy creating legislative hazards and threats, much as mud farmers waste resources creating road hazards. In addition, and probably more important, political extortion wastes resources by distorting private economic decisions. Entrepreneurs take risks, make investments, invent new goods and new production techniques, all to make money. These useful activities create new wealth and income and raise the standard of living. But, McChesney points out, the threat of political extortion reduces incentives to create new wealth and income. The entrepreneur will take fewer risks and undertake fewer investments and new projects if sly politicians are lurking nearby, ready to expropriate his gains. The result is a large hidden cost of political extortion—the cost of wasted economic opportunities. □

* Fred S. McChesney, "Regulation, Taxes, and Political Extortion," in Roger E. Meiners and Bruce Yandle, editors, *Regulation and the Reagan Era* (New York: Holmes & Meier, 1989), pp. 223-41.

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# Capitalism: An Olympic Winner

by David R. Henderson

The sports pages tell us that America lost the Winter Olympics. In a literal sense, that's true. But to the extent that an economic system proves itself at an Olympics, it was America's capitalistic system of economic freedom, that triumphed.

The point was made implicitly in the exhibition skating on the last Saturday of the Olympics. Viktor Petrenko, the gold medalist for men's skating from Odessa in Ukraine, put on one of the most joyous performances of the evening. He performed, besides some breathtaking triple axles, a mixture of the twist and other modern dances, all to the tune of Chubby Checker's "Let's Twist Tonight."

So what does this have to do with economics? Look at the economic system under which the twist and the song were produced. It was capitalism.

Only by being free to create and to sell the products of his creativity was Chubby Checker able to make his song and his dance popular. The tools and the means of expression that Petrenko chose were the fruits of economic freedom.

Now you might say that these are trivial examples. Then look at the big picture. Literally. Millions of people worldwide, who couldn't afford the time or money to attend the Olympics, enjoyed the Games on television.

But television is a product of capitalism, of a system in which people are relatively free to pool investors' funds and to take risks with them. That's how television stations, TV sets, and commercial satellites were developed. And although it's obvious now that televising winter sports is profitable, that's mainly because about 30 years ago, Roone Arledge of ABC had the courage to risk his employer's funds to make it work.

Few of these investors and entrepreneurs were selflessly creating for the greater good of mankind. Or, if they were, it wasn't their main goal. Their desire was to make money, and some of them earned lots of it.

But that's not a flaw of capitalism. It's one of capitalism's principal virtues. It means that if we desire something, we can depend on people who want to make money to provide it. There are a lot of people like that—I am one, proudly, and so, I hope, are you. Because there are so many of us, an economic system that depends on us is pretty reliable.

So if capitalism is so great, why did the United States, which still has a fair amount of economic freedom, win so few medals? Why did the Unified

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AP/WIDE WORLD

*Viktor Petrenko, who recently announced plans to move to the U.S., is looking forward to buying a house and continuing his career here.*

Team, made up of athletes from five former Soviet republics, win so many? And why were 20 of Germany's 24 individual medals won by athletes from what was recently socialist East Germany?

The apparent American failure actually results from one of our country's strengths. Economic freedom doesn't guarantee gold medals. It guarantees that each person is free to pursue whatever career or leisure activity interests him. Because we have so many choices, many Americans who could be champion athletes spend their lives doing other things.

Members of the Unified Team and the former East Germans did so well because their governments, by enforcing socialism, precluded other options. In the former Soviet Union, people still cannot choose many careers or start many kinds of businesses. They look in awe at average Americans who own their own homes or rent two-bedroom apartments, and who have cars that don't break down.

Thus, for many citizens of these socialist countries, the only way to get ahead was sports. The government could guarantee them a private apartment, food, and, for some of the best athletes, a car inferior to a Yugo. In return, the government got them to work almost every day, year after year, on their "sport." Many athletes still in the former Soviet Union probably would trade everything they have for a green card that allows them to live, work, and make money in America.

I admit my disappointment that America didn't win more medals. But one of my joys watching the Winter Olympics and anticipating the summer games in Barcelona is seeing capitalism work in all its glory. □

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# Civil Disobedience: A Threat to Our Society Under Law

by Morris I. Leibman

*This article, which originally appeared in* The Freeman *in December 1964, is an adaptation of Mr. Leibman's address before the American Bar Association Meeting, Criminal Law Section, in the summer of that year. As we again face challenges to our society and its rule of law, his ideas merit a careful re-examination.*

Woodrow Wilson once said: "A nation which does not remember what it was yesterday, does not know what it is today, nor what it is trying to do. We are trying to do a futile thing if we do not know where we came from or what we have been about."

In seeking to improve tomorrow, it is our duty to remember where we have been and reflect on where we are.

We live in that instant of time when it can be said that never before have the people in this country enjoyed so many material goods, however "imperfect" their distribution. Never before have we had as much mechanical, electronic, and scientific equipment with which to subdue the natural obstacles of the universe. But the multiplication of consumer wealth is subordinate to our greatest accomplishment—the fashioning of the law society [one that operates under the rule of law].

*Morris I. Leibman (1911-1992), was a partner in the law firm Sidley and Austin. He was awarded the Presidential Medal of Freedom in 1981 by President Ronald Reagan.*

Never in the history of mankind have so many lived so freely, so rightfully, so humanely. This open democratic republic is man's highest achievement—not only for what it has already accomplished, but more importantly because it affords the greatest opportunity for orderly change and the realization of man's self-renewing aspirations. Our goals, as set forth in the Declaration, have been buttressed by a Constitution, a system of checks and balances, a mechanism judicial, legislative, and executive which permits the continuation of Western civilization's spirited dialogue. This unhampered dialogue makes possible the opportunity to continuously approximate, through our legislative and judicial system, our moral and spiritual goals.

The long history of man is one of pain and suffering, blood and tears, to create these parameters for progress. This noble and unique experiment of ours over a hundred years ago, lived through the cruelty of a massive civil war to test whether such a unique system could endure. It did. It has. It will. Let us always remember that the law society is the pinnacle of man's struggle to date—the foundation for his future hope.

There is an obligation to that law society. It was stated by Abraham Lincoln in these passionate words: "Let every American, every lover of liberty, every well-wisher to his posterity swear by the blood of the Revolution never to violate in the least particular the laws of the country. . . . Let

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every man remember that to violate the law is to trample on the blood of his father, and to tear the charter of his own and his children's liberty. Let reverence for the laws be breathed by every American mother to the lisping babe that prattles on her lap; let it be taught in schools, in seminaries, and in colleges; let it be written in primers, spelling books, and in almanacs; let it be preached from the pulpit, proclaimed in legislative halls and enforced in courts of justice. And in short, let it become the political religion of the nation; and let the old and the young, the rich and the poor, the grave and the gay of all sexes and tongues and colors and conditions, sacrifice unceasingly upon its altars."

No society whether free or tyrannical can give its citizens the "right" to break the law. There can be no law to which obedience is optional, no command to which the state attaches an "if you please."

What has happened to us? Why is it necessary, at this moment, in this forum to repeat what should be axiomatic and accepted? Many, many words more eloquent than mine have examined from every angle the genesis, the roots, the grievances, the despair, the bitterness, the emotion, the frustration that have resulted in the tragedies of these days.

## Responsible Citizenship

Now what is the responsibility of a citizen—the majestic title bestowed on those of us who create and share in the values of the law society? Let there be no question of where we stand on human rights and our rejection of discrimination. Surely the continuing social task for the morally sensitive citizen is to impart reality to the yet unachieved ideal of full and equal participation by all and in all our values and opportunities.

Yet we must remember that there are no easy solutions for man's inhumanity to man. Justice Frankfurter once said: "Only those lacking responsible humility will have a confident solution to problems as intractable as the frictions attributable to differences of color, race, or religion."

Let's not forget there is nothing new in violence. Violence has throughout mankind's history been too often a way of life. Whole continents have been involved in riot, rebellion, and revolution. Human rights problems exist in India, in Asia, in the Middle East, and in Africa. We cannot sanction terror in our cities. Retaliation is not justified by bitterness or past disillusionment. No individual or group at any time, for any reason, has a right to exact self-determined retribution. All too often, retaliation injures the innocent at random and provokes counterretaliation against those equally innocent.

Our imperfections do not justify tearing down the structures which have given us our progress. The only solution is the free and open law society. In times when man's progress seems painfully slow on any one issue, we might also consider how well we are doing on all issues compared to most areas of the world over most of the world's history.

In this frame of reference let us identify certain current forces whose aim is to destroy the law society.

Ethnological warfare, the inciting of dissension and conflicts between nationalities and races, has been a widely exploited revolutionary tactic. Communists were long instructed to change passive attitudes to "activist" attitudes, to intensify the struggle at all levels at all times. Communists have had their imitators, who mimic, under many "theories" and many labels, doctrines which reject law and order. The Nazis, the Malcolm X's, the Ku Klux Klanners have repeatedly and directly challenged our principles and insisted on taking "law" in their own hands.

The jungle lawlessness of the frontier demonstrated to the pioneers that law was essential to the establishment of civilization. It was not the destruction of the buffalo, or the rise of fences, or fast-draw gunmen that tamed the wilderness. It was the installation of American juridical proceedings that enabled our people to weld together the disparate territories destined to become an organic nation.

## Semantic Traps

I am also deeply troubled by certain concepts which have sought acceptability: the idea of "Freedom *Now*" and the idea of "Righteous Civil Disobedience." In my opinion both terms are semantic traps and only add heat to the problems of freedom and justice for all. It is a further semantic trap to divide the discourse on civil disobedience into a stereotype of liberalism vs. conservatism.

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***". . . No individual or group at any time, for any reason, has a right to exact self-determined retribution. All too often retaliation injures the innocent at random and provokes counterretaliation against those equally innocent."***

"Freedom Now" is an illusion. The desire for self-expression can be satisfied only in an atmosphere of freedom, and freedom is not absolute. It exists only within the necessary restraining measures of society.

I wish it were possible to have heaven on earth. I wish it were possible to have the ideals of justice and freedom in all their perfect form at this moment. The cry for immediacy is the cry for impossibility. It is a cry without memory or perspective. Immediacy is impossible in a society of human beings. What is possible is to continue patiently to build the structures that permit the development of better justice.

Let us also beware of pat phrases such as "justice delayed is justice denied." Justice delayed is no excuse for antijustice or the destruction of the law system. The fact that particular reforms have not been completely achieved does not justify rejecting legal means—the only hope for lasting achievement.

The demand for equality cannot be converted into a fight for superiority. We must be for equality under the rule of law. We are for freedom *under* law, not freedom *against* the law.

Let us also avoid unreal questions such as whether justice is more important than order or vice versa. Order is the *sine qua non* of the constitutional system if there is to be any possibility for long-term justice based on public consensus.

## Flouting the Law

What about the concept of "righteous civil disobedience"? I take it that all men now accept the fact that there can be no justification for violent disobedience under our constitutional system. Is the concept validated when the disobedience is nonviolent? In my opinion this idea has no place in our law society.

Parenthetically, I would suggest that you experts in criminal law consider whether there can be "civil" disobedience where there is a specific intent to disobey the law. Such a specific state of mind is ordinarily treated as the essence of criminality, hence not "civil." Therefore, it seems to me that there is an inherent contradiction in the concept of premeditated, *"righteous"* civil disobedience.

Yet I prefer to base the case on broader grounds. The concept of righteous civil disobedience, I think, is incompatible with the concept of the American legal system. This is particularly axiomatic where this society provides more than any other for orderly change; where every minority—including the minority of one—has been protected by a system of law which provides for orderly process for development and change. I cannot accept the right to disobey where, as here, the law is not static and where, if it is claimed to be oppressive or coercive, many effective channels for change are constantly available. Our courts do not have to apologize for their continued dedication to the liberty of all men. Our legislatures have regularly met the changing times and changing needs of the society with consideration for the unalienable rights of all. Even the Federal and state constitutions have been amended. Our law has not only been a guardian of freedom, but the affirmative agent for freedom.

While the idea of civil disobedience may evoke sympathy where the claim is made that the cause is just, once we accept such a doubtful doctrine we legitimatize it for other causes which we might reject. We must be even more careful in the sym-

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pathetic case because, in effect, that sets the standard of conduct which then becomes acceptable for cases not as appealing or for groups not as responsible. Thus, we substitute pressure for persuasion and squander the carefully nurtured value of self-restraint and jeopardize the system of law.

The plain fact of human nature is that the organized disobedience of masses stirs up the primitive. This has been true of a soccer crowd and a lynch mob. Psychologically and psychiatrically it is very clear that no man—no matter how well-intentioned—can keep group passions in control.

## Disobedience Breeds Disrespect

Civil disobedience is an *ad hoc* device at best, and *ad hoc* measures in a law society are dangerous. Civil disobedience under these circumstances is at best deplorable and at worst destructive.

Specific disobedience breeds disrespect and promotes general disobedience. Our grievances must be settled in the courts and not in the streets. Muscle is no substitute for morality. Civil disobedience is negative, where we require affirmative processes. We must insist that men use their minds and not their biceps. But, while the emphasis must be on the three R's of reason, responsibility, and respect, we cannot accept self-righteousness, complacency, and noninvolvement. We reject hypocritical tokenism. We have an affirmative and daily duty to eliminate discrimination and provide opportunity—full opportunity and meaningful equal justice for all our people.

In an era of social, political, and scientific revolutions—and at a time of accelerating and complex change—we of the law must particularly renew our understanding and improve our articulation of the basic issue of freedom under law and the continuing need to strive for equality and meaningful liberty and justice for all.

Freedom is not some easy gift of nature. The plant of liberty has not grown in profusion in the wilderness of human history. Liberty under law is a fragile flower. It must be nurtured anew by each generation of responsible citizenry. Let but a year of neglect be sanctioned, even *celebrated,* and the jungle of force threatens to recapture the untended garden. □

IDEAS ON LIBERTY

## The Flight from Values

Strong, cohesive societies are based on even stronger belief systems sustained by the people as they make their daily fundamental political, economic, and cultural choices. Over the ages, people creating strong civilizations made such choices not because they felt they could be "proven" correct (science barely existed), but because they believed their choices were right and arose naturally from their common belief system. Today, however, we seem to have abandoned the idea that a common belief system is necessary at all—a result, in part, of a general decline in faith, and the moral strength derived from it. Instead, we like to think that all values are equal or "relevant"—that just about anything goes. This attitude has arisen not from any deeply honest confrontation with past or present values but from a flight from values altogether.

—WILLIAM D. GAIRDNER
*The Trouble with Canada*

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# Czecho-Slovakia Rejoins the West

by Sean Gabb

I had dinner recently with a friend in Prague. Before 1989, he had been a dissident economist. His open contempt for socialism had denied him a university post, and earned him continual police harassment. Today, he is a senior official in the Federal Ministry of Finance. People address him as "Pan Doktor" and listen to him with respect. Prosperity, though, has not altered his opinions. He remains as committed now to free markets as in 1977, when as a graduate student he first read F. A. Hayek and Milton Friedman. Asked about the pace of economic reform in his country, he replied, "Radical problems need radical solutions." These words express a majority of public opinion and the policy of almost every governing body in the Czech and Slovak Federal Republic.

## An Unhappy History

The history of Czecho-Slovakia between 1938 and 1989 was bitterly unhappy. Before then, it was the 11th richest country in the world. The Czech lands contained the greatest concentration of industrial plants on the whole Eurasian land mass east of the Ruhr Valley. Slovakia possessed a thriving peasant agriculture. The country was the only democracy in the region. It stood out sharply from all its neighbors by importing rather than exporting refugees. Its cities were exciting, polyglot communities of merchants and artists. Franz Kafka and Karel Capek were among its leading writers. Leos Janacek was its leading composer. Czecho-Slovakia was firmly part of the West.

Then in March 1939, it ceased to exist. The Munich Conference of five months earlier had given a great slice of its western region to Germany. Now the Germans annexed what remained of the Czech lands, and for the next six years ruled them as conquered provinces. Slovakia retained a formal independence, but was in fact a German satellite. The social damage was incredible. First, hundreds of thousands of Jews, Gypsies, and others were deported to concentration camps and murdered. Then, following the Allied victory, millions of the indigenous German community were expelled, with heavy loss of life. When reconstituted in 1945, the country was scarred almost beyond recognition.

It had little time for recovery. In 1948, the Communists took power in a political coup. They turned the country into a grim, Stalinist tyranny. The media were put under a close censorship. All opposition, real or imagined, was liquidated. The whole economy was nationalized. The effects of all this hardly need telling: While the prisons filled and the toll of broken lives mounted, Czecho-Slovakia's place in the world economic order steadily fell until it was the poorest country in Central Europe.

## The Restoration of Liberty

The long nightmare came to an end with the revolution of November 1989. The new federal and state authorities immediately set about restoring freedom under the rule of law. Political freedom was restored almost overnight. This was an

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achievement so great and sudden that the most sober local account might be disbelieved. Let me therefore quote from a U.S. State Department report:

> Czechoslovakia made impressive progress in restoring human rights in 1990. . . . Legislation providing for the rights of free speech, assembly, association and press was adopted, and the citizenry embraced these rights to create an active, pluralistic political life. Political offenses were eliminated from the criminal code, and legal provisions strengthening the right of due process for criminal defendants were approved. A sweeping presidential amnesty freed over 20,000 persons, including all known political prisoners. Arbitrary arrests, searches, and interrogations, which had been commonplace during the Communist regime, were eliminated in practice, and safeguards were adopted to prevent arbitrary interference with privacy, home, family, and correspondence. (*Country Reports on Human Rights Practices for 1990* [Washington: U.S. Government Printing Office, 1991], p. 1123)

Economic freedom, however, will and must take much longer to restore. The task is colossal. My own country, Great Britain, made heroic efforts in the 1980s to reverse a generation of economic decline. But these efforts were made in a country that was still mostly capitalist, with a functioning price system and developed capital markets. The Czech and Slovak Federal Republic began its own transformation with none of these advantages. Economic assets were owned by the state to an extent rare even in the former Soviet bloc, and there existed no meaningful structure of relative prices by which to chart any economic course or measure any economic performance.

"Radical problems need radical solutions." These words are not just a catchy slogan. The federal and state authorities have begun the most ambitious scheme of market reform ever attempted. Its purpose is to convert the Czecho-Slovak economy within three years from one based on central planning to one based on an almost completely free play of market forces. I describe this scheme under the following headings: currency convertibility, trade liberalization, restitution, small privatization, and large privatization.

## Currency Convertibility and Trade Liberalization

On January 1, 1991, the Foreign Exchange Act established internal convertibility of the crown. This allows corporate and natural persons registered as economic entities to buy unlimited amounts of hard currency from the central bank. They can use this to pay for the import of goods and services, or to pay royalties, interest on foreign loans, and dividends.

Although these entities are required to offer all hard currency they earn to the central bank at the official exchange rate, this has not proved onerous. A strict control of the money supply unique among the former Soviet satellites has produced a very close convergence of the official and black market exchange rates. Quite often, foreign visitors to Czecho-Slovakia will find as good a rate of exchange in the banks as on the streets. Indeed, whatever it may be in theory, the crown is emerging as one of the hardest currencies in Europe: Since my arrival here from London in November 1991, it has appreciated against the pound. And, while the law restricts private individuals to changing no more than 3,000 crowns per year into hard currency, this is seldom enforced.

Until 1991, all foreign trade with Czecho-Slovakia was the monopoly of a few state-owned companies. These cared nothing about profit. Contracts were made on the basis of personal corruption or the espionage requirements of a Warsaw Pact member state. All trade in motor cars went through Motokov, in textiles through Centrolex, in heavy machinery through Skodaexport, in electronic equipment through Kovo, in arms through Omnipol, in chemical products through Chemapol and Petrimex.

These companies were not abolished, but their monopoly was lifted, and they must now compete with private trading companies. On the whole, this has been to their benefit. Kovo has taken especially well to the new commercial imperative, even expanding and diversifying its activities. The result has been to open the country to normal international trade, private company with private company.

This has not meant the establishment of free trade. Tariffs are as high as 70 percent. Also, for a small range of goods, a license is required before foreign trade can begin. But Czecho-Slovakia is

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actively seeking to join the European Community, either as a full or associate member, and its tariffs will sooner or later need to be lowered. As for the restricted goods, most of these have military applications, and the rules are no different in principle from those long applied in most Western countries.

## Restitution

One of the main problems at the start of the reform process was the complete absence of private enterprise. Unlike in neighboring Poland and Hungary, everything had been owned by the state. A company law was passed to allow the setting up of private businesses, and a start was made on making the necessary accompanying changes to the civil law and the taxation system. But far better than waiting while the new companies founded in 1991 grew large was to transfer existing state ventures into private hands.

So far, the most successful of these transfers has been restitution. This allows the owners—or their legal assignees or heirs—of property stolen by the Communists since 1948 to seek its return. The last date for filing claims was October 31, 1991.

There were some problems with this form of transfer. First, proving ownership was often difficult after up to 40 years of interrupted possession. Second, where houses or very small businesses were concerned, there was the position of current possessors to take into account. Third, the restitution law excluded Germans who had been expropriated between 1945 and 1948. This led to problems between Prague and Bonn, and at a time when a new treaty of friendship was being prepared between the two countries.

Even so, restitution worked. Property worth about a billion dollars has been put into private hands. Those who at first doubted its wisdom, like Tomas Jezek, Minister of Privatization in the Czech Republic, have been converted. He comments, "I have changed my former attitude toward restitution."

## Privatization, Large and Small

Under the Small Privatization Act of 1990, provision was made for the sale and leasing of small businesses—such as shops, restaurants, hotels, workshops, and so forth—at public auction. By the end of 1991, more than 21,000 units in the Czech lands and more than 8,000 in Slovakia had been sold, at an estimated value of $350 million. There is still a long way to go before the state has divested itself of every small business.

Until November 1991, there was often ambiguity as to whether a business should be put to auction or withheld for restitution. There remains the problem of "old structure personnel"—middle and senior management under the old regime—who deliberately obstruct the auctions. But the process can only be delayed, not prevented.

Under the Large Privatization Act of 1991, the 3,000 or so largest companies in Czecho-Slovakia are to be privatized by a method of their own choosing. Some have chosen sale by auction. Others have chosen sale to a foreign investor. The most notable examples of this have been the sale of the Skoda auto company to Volkswagen, and the sale of the state airline to Air France. Most, however, have chosen "coupon privatization," a method first used in British Columbia, and suggested to the federal government by Jan Svejnar of the University of Pittsburgh.

In principle, the method is quite simple. The participating companies are to transform themselves into joint-stock companies owned by the state. Shares are then to be distributed free to those citizens who have registered as interested and who have bought books of investment coupons. The estimated value of these companies is around $10 billion. There is a registration fee of about $35.

The practice is more difficult. Coupon privatization is to happen in two stages, during which it will be possible to exchange investment coupons for shares in companies. The first began in March 1992. Each stage of privatization contains several rounds in which shares are offered. Each round contains four phases.

In the first, the companies announce the value—expressed in investment coupons—of the shares to be offered in the round. In the second, the holders of investment coupons order shares in the companies of their choice. In the third, these orders are processed. In the fourth, the results of the round are announced. There are three possible results.

First, there is no excess of demand or supply. All the shares offered will be bought at the stated price. That will be the end of the round. Second, there is a lack of demand. All those who have ordered shares will be satisfied, and the excess will be reserved for the next round, in which they will be

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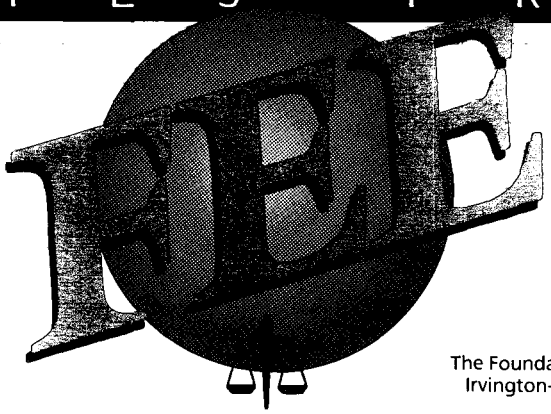


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**July 1992**

# THE OLD AND THE NEW

The Foundation for Economic Education is the oldest conservative research organization dedicated to the preservation of individual freedom and the private property order. It was established in 1946 by Chamber of Commerce executive Leonard E. Read and guided by its adviser, the eminent Austrian economist, Ludwig von Mises. Both served FEE until their deaths in 1983 and 1973, respectively. In the footsteps of FEE, many conservative think tanks have come into existence, serving supplementary functions or emulating the endeavors of FEE. A few organizations, such as the Heritage Foundation and Cato Institute, managed to surpass FEE in size and scope of functions. All of them are focused on influencing the political scene; they are located in Washington with their eyes fixed on the White House and the U. S. Congress. In contrast, FEE avoids getting embroiled in the heated controversies raging in Washington; located in Irvington-on-Hudson, New York, it has always remained a purely educational organization.

In the past, FEE's energy and resources were directed toward imparting economic knowledge to the American public at large. It conducted countless classes and seminars for adult audiences and published *The Freeman* magazine for the general public. In the future, it plans not only to continue this service, but also to turn its attention to the formal education of youth. College, after all, forms the common mind and shapes public opinion more than any other institution of learning.

Although there are several colleges and universities that build on Judeo-Christian values, and several departments of economics that teach economics in the classical tradition, FEE has never promoted them over others, nor sought their cooperation in reaching college youths. In the future, FEE will make every effort to cooperate with these colleges, to attract students to their classes, especially during the long summer months when most campuses are deserted and most students are unemployed. After all, minimum wage laws and labor unions are condemning many young people to idleness during their summer vacations. Many of them

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would rather use their time more productively by earning summer credits. The particular courses FEE plans to offer are *Principles of Economics* for freshmen and *Current Economic Issues*, which is very popular with upperclassmen.

Along similar lines, there are some 2.4 million elementary and secondary teachers in the United States, many of whom could use more graduate credits. In most public schools, their salaries and promotions depend on the number of credits they have earned. In the future, FEE will make every effort to help teachers earn more graduate credits in schools imparting our values and teaching classical economics. It will do so especially during the long summer months when many teachers are looking for an opportunity to earn the needed credits in pleasant surroundings and at bargain tuition rates.

On a yet higher level, the "licensing" of our college instructors by way of advanced degrees is completely in the hands of the mainstream establishment. In the field of economics, every accredited university, without exception, imposes stringent Keynesian requirements on its degree students, instilling holistic sophistry while ignoring market principles. This stranglehold of Keynesianism must be broken before there can be a meaningful change in economic education.

In the future, FEE will work with a few "tutorial" universities that confer higher degrees under state laws. It may even seek a state charter which permits FEE itself to confer such degrees in economics. Free from accreditational restrictions and obligations, a tutorial FEE program may attract greatly talented and highly motivated young people. And without million-dollar capital outlays and inordinate fixed expenses, FEE may be able to spend its resources on instruction rather than construction.

On the level of public education, FEE will continue its highly successful Op-Ed activity which, in 1991, resulted in more than 500 references to and acclaims of *The Freeman* in the American press. We may proceed along this line and develop a newspaper syndicate to which our favorite writers will be asked to contribute.

Throughout the years our *Freeman* authors have written great essays and articles which deserve to be preserved in book form. Their writings are great because they build on the foundation of eternal truth; they are wise because they search for inexorable principles ruling human action not only in all economic matters but also in all human endeavors. We call them "Freeman Classics." Modern technology enables us to cull these classics from *The Freeman* issues of the last thirty-six years and reproduce them economically. Such books on particular topics may contribute significantly to present debates and discussions; but they also are likely to be FEE's greatest legacy to future generations.

Great literature is not, in itself, a means of solving our problems; but it silently and yet forcefully points the way to noble action and virtuous living.

Hans F. Sennholz

*President*

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# R.S.V.P.

Friends of FEE are asked to help us in evaluating plans for future programs. Please take a moment to fill out this questionnaire. We value the advice of our *Freeman* readers.

1. Which new programs would you like FEE to offer? Please rank: 1 = most wanted to 6 = least wanted.
   _____ College credit for FEE courses
   _____ Graduate credit courses (continuing education) for teachers
   _____ Ph.D. program
   _____ FEE newspaper syndication
   _____ FEE monthly book club
   _____ Public-issues forum at FEE
2. Are you interested in purchasing audio cassettes?
   _____ of *The Freeman*
   _____ of other books published by FEE
   _____ of FEE summer lectures and seminars
   Other: (please explain) _____

   _____
3. Would video cassettes interest you?
   _____ of FEE debates and discussions
   Other: (please explain) _____

   _____
4. Would you join a FEE Monthly Book Club offering topical books and booklets containing *Freeman* classics? _____
5. Is there any other educational activity FEE should pursue? _____

   _____
6. Have you contributed to FEE within the last year? _____
   If not, why not _____

   _____

   _____

   _____

   _____

Thank you for taking the time to complete this questionnaire. We would like to send you a free copy of a Hans Sennholz booklet, *In Pursuit of Excellence*, for your trouble. If you would like a copy, please give us your name and address.

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offered at a lower price. Third, there is an excess of demand. No shares are sold. Instead, coupons are returned to their holders and the shares are offered in the next round at a higher price.

Coupon privatization is a kind of lottery, in which there will be winners and losers. Most obviously, it will be possible for more astute investors —or those with inside information—to guess that certain shares will be under-subscribed in a given round. They will then be able to wait until a later round and buy what they want at a lower price. This will certainly cause resentment among less sophisticated or lucky investors, and may lead to wrangles over corruption.

There are more practical objections, put forward by the advocates of wholesale privatization by auction. They claim that the coupon method will delay foreign investment, since books of coupons are available only to Czech and Slovak citizens, and it will do little to break up the monopolies and cartels that currently dominate the economy.

It must also be said that coupon privatization is being tried in a country with an obsolete telecommunications network and a complete lack of financial experience. A similar scheme would cause problems in any Western country; and the advocates of privatization by auction are rubbing their hands with glee, waiting for its failure and their own moment of triumph when their alternative scheme is extended from small privatization to large. Only time can tell how the scheme will work in practice.

Nevertheless, registration went very well, with more than half the adult population buying books of investment coupons; and the first stage is, as I write, proceeding without obvious mishap. It may be that, as in so much else of their economic reform program, the Czech and Slovak peoples are so determined to put Communism behind them that even a flawed plan will be made to work.

## Problems of Economic Reform

Not everything, of course, has gone smoothly. All major economic changes involve losses for some person or group. In January 1991, most prices were decontrolled. During the next few months, there was an average increase of 50 percent, and some prices rose by more than 200 percent. This was a fundamental requirement of the reform program. Forty years of price distortion had to be undone. But its effects in a low-wage, low-productivity economy were very sharp. Consider: The average male worker in Czecho-Slovakia earns 3,480 crowns per month (30 crowns equal approximately one dollar). After income tax and other deductions, he takes home 2,800 crowns. Let's assume that his wife brings in another 1,500 crowns, and then deduct 400 for rent and other services. This leaves 3,900 crowns per month to feed and clothe a family of two adults and usually two children. This is 130 crowns per day.

Now, a pound of beef costs 40 crowns, coffee is 38 crowns per pound, and a large loaf of bread is 25 crowns. Soap, toothpaste, and other toiletries cost English prices, which are rather higher than American. A good pair of boots can cost 2,000 crowns. Things like refrigerators, washing machines, television sets, and other consumer durables can easily cost a year's disposable income, and often more.

Then there is unemployment. This has so far remained low in the Czech lands. But toward the end of 1990, it stood around 5 percent in Slovakia. Fifteen months later, it was 12.3 percent and rising fast. This part of the country had been turned by Stalin into a vast armaments factory. With the collapse of the Soviet empire, its market vanished. It is impossible to say how much of the now redundant heavy industry is worth privatizing—how much of it can be converted to civilian production and made to earn a profit.

The uneven suffering of the Czech and Slovak republics has led to a constitutional wrangle that may grow large enough to threaten the continued existence of the federal state. It can only be hoped that prosperity will return before any serious political and economic damage can result.

And Czecho-Slovakia deserves to be prosperous. Without significant help from the West—especially without any lowering of trade barriers by the European Community—it is fast throwing off the disastrous legacy of the half century that preceded 1989. It transformed itself at once into a constitutional democracy. It is transforming its economy with wonderful rapidity from one dominated by central planning to one based on markets and individual initiative.

I came to Czecho-Slovakia worried about what I might find. Four months later, I feel honored to be living through one of the most inspiring rebirths of modern history. □

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# The Bill of Rights and Moral Philosophy

by Tibor R. Machan

America's political foundations were laid more than 200 years ago. The Declaration of Independence simply but clearly stated that each of us has basic rights to life, liberty, and the pursuit of happiness. The framers of the Constitution then made the point in more detail by adding the Bill of Rights, so as to single out some rights as deserving special mention without belittling others not listed.

The central thesis of these documents is the doctrine of individual rights. Spelled out in considerable detail by the English philosopher John Locke, this doctrine holds that each person is a sovereign being, not to be ruled by or rule over others, but rather to take charge of his property—his own person and estate. Our nation's founders thus rejected the most pervasive doctrine on the globe at the time—that some people were justified by God, nature, force, or convenience to be the masters of their fellowmen.

The framers, unfortunately, did not fully accept the doctrine of individual rights when they permitted slavery, so the Constitution remained, for nearly a century, a contradictory legal document. It took a civil war to change this. Indeed, without the philosophical basis stated in the Declaration, it is doubtful that a solid political argument against slavery could have been found in our country's heritage.

How is this doctrine of individual rights faring among today's political philosophers? Not very well. Few of them champion individual rights. Even fewer scholars in other branches of the liberal arts, what with their relativism, determinism, and amoralism (the famous value-free stance of many social scientists) respect the idea. While lip service is still given to human rights—by Amnesty International and other "human rights watch" agencies—the precise meaning of such rights has become obscure. Whereas the meaning of the right to liberty had been that one ought to be free to go it on his own initiative, without uninvited intrusion from others—which also meant that other people could not be conscripted to be one's means for even the most benign objectives—today one has a "human right" to nearly everything one values or likes. These are the numerous entitlement programs that have nearly bankrupted the nation.

Yet it isn't only that the concept of human rights has been given a new meaning, by way of combining the Lockean doctrine with many alien dogmas. Many political philosophers scoff at the idea outright. Having accepted the notion that truth is historically relative, they view the belief that each person is a sovereign being, not to be subjugated to the will of king, party, or even popular majorities, as a relic of the distant past.

Paradoxically, at the same time that such historicist theories are used to make short shrift of our political heritage, other theorists are not hesitating to indict us for "our" past treatment of Native Americans, African-Americans, women, and other groups. Here, suddenly, we have discovered uni-

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versal standards, so we can say that our forefathers were bigots, racists, sexists, and so forth. Why this is taken seriously and not dismissed as incoherent, since it applies current value judgments to other historical periods, is one of the curiosities of contemporary political discussions.

While America's 200 years of experience with rights theory is certainly worthy of celebration, the substance of what we should be celebrating is not faring well in the halls of academe. Fortunately, however, those who inhabit those halls are not so influential about the direction the world will take as they sometimes believe.

The people, so long as their right to free thought is still respected by law, are still in charge. And they can make the difference between a future guided by the principles that gave birth to our nation or one directed by alien philosophies that will take us back to the dark ages of feudalism and despotic rule.

It is worth some effort to recall the basic ethical and political ideals captured in the Bill of Rights. This will indicate just how unjustified the historicist skepticism is vis-à-vis that wonderful document.

**The First Amendment** maintains that no law may be made concerning the crucial human activities of speech, press, assembly, or the petitioning of the government for a redress of grievances. How does this prohibition square with moral sense?

Morality involves, at the most basic level, that (1) each person is free to make choices as to what he or she will do and (2) there are identifiable standards by which to determine which of our choices are better or worse. Any decent society must aim, ultimately, for justice. And justice amounts to respecting the basic nature of human community life. Such a task will, therefore, involve respecting the basic tenets of morality, since the moral nature of human life is perhaps its most distinctive feature.

The First Amendment pays direct attention to the moral nature of our lives by placing protection around each person's right to think and speak as he judges best.

**The Second Amendment** shows equally firm respect for the value of every person's life and liberty in a social context by making it clear that no one is to be deprived of his capacity to defend against aggressors. The right to bear arms is the right of self-defense, which flows from the basic right to our lives and from the basic value that life possesses for each of us.

**The Third Amendment** begins to affirm the right to private property by prohibiting government's use of private homes in time of peace.

It is clear from this that the right to private property was a vital aspect of the politics of the framers. And that right affirms in practical terms the basic rights to life and liberty already spelled out. In other words, the right to private property translates into as concrete an indicator as possible the practical requirements for respecting the rights to life and liberty. It makes clear that those rights require a sphere of personal jurisdiction secured by property law.

**The Fourth Amendment**, which protects us against unreasonable searches and seizures, extends the idea of private property rights to cases in which there can be understandable temptation to violate them. Even when an emergency or state of siege exists, there may be only reasonable search and seizure, meaning that the government may disregard the privacy of its citizens only with good reason.

This makes moral sense, once again, because when victimization has occurred, citizens of a free society are obliged to support efforts to rectify matters. Without reasonable search and seizure powers, such rectification is impossible—how else would the government's detectives conduct a process of discovery and arrest a suspect? But standards of reasonableness—which, of course, cannot be laid out forever but must remain contextual and unspecified, although they are always required—need to guide the process. (Here is a clear case of a procedural right, deriving from the right to life and liberty.)

**The Fifth Amendment** also illustrates the moral awareness of our framers. Except for military legal procedures—where the task is necessarily guided by emergency conditions—to restrain someone it is necessary to lay out a detailed indictment citing reasonable grounds for suspicion. Once such a process has begun, it makes sense that in a free society bent on maintaining justice, cooperation with the legal machinery of government should be mandated. (This, incidentally, justifies the subpoena process

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as well. Citizens of a society bent on justice may not exempt themselves from participating when the wheels of justice require their presence.)

Self-incrimination, in turn, may not be coerced, since that would be to treat an accused person as if he had already been convicted. Moreover, no right may be disregarded without due process of law, because "due process" is the detailed expression of just treatment. It involves the presentation of evidence justifying reasonable suspicion, probable cause, clear and present danger, and so on. Barring these, no action may be taken that disregards the rights of citizens.

Finally, the Fifth Amendment assumes that private property may occasionally be needed for public purposes. This makes sense—courthouses, police stations, and military bases must be built. These are genuine public concerns, not to be confused with the bloated rendition of "public" employed in recent times, whereby anything a sizable number of people happen to desire becomes a public purpose. Only when these proper public uses are at issue may government engage in takings, and only if the market price is paid for what is taken.

**The Sixth Amendment** speaks of a "right to a speedy and public trial," thus specifying further certain procedural implications for a legal system concerned with justice in a genuine free society, one in which citizens are recognized as sovereign. The same applies concerning the **Seventh and Eighth Amendments**.

The unfortunately neglected **Ninth Amendment** affirms that citizens have innumerable implicit rights, depending on their various circumstances, based on the rights affirmed both in the Declaration of Independence and in the amendments cited earlier. Since the Constitution is a brief and concise political/legal document, it cannot be expected to enter the details of the theory of rights guiding it.

The Ninth Amendment is the way the framers indicated that they have not forgotten the broader framework guiding their political/legal deliberations. It also imposes an obligation on legislators and courts to proceed to discover the further rights of the people. In short, the Ninth Amendment is in a way a code of professional ethics for our political representatives and appointed officials. It is, of course, widely violated.

**The Tenth Amendment** may be understood as a feature of a contextualist approach to the law. The federal government cannot have much expertise in many areas, so it should not meddle in such matters. It is, indeed, prohibited from doing so—it is beyond its range of authority, its jurisdiction. The law, after all, must be implemented locally, applying to the facts of life of the citizenry. Some of these facts will apply generally enough so they may be treated at the Federal level. Others, in turn, are regional. Thus we have different governmental bodies—from the Federal down to the municipal. None of their laws may violate the individual rights of the citizens. But apart from that prohibition, the different governmental bodies will have needs for different powers. That is the thrust of this amendment.

After the Bill of Rights, the amendment process quickly deteriorated into a mobocracy, and nearly every time some powerful sentiment raged, an amendment was passed to satisfy it. It is not speculative to say that nearly every good subsequent emendation of the Constitution could have been derived from its existing provisions, including the abolition of slavery, while the rest were expressions of impatience with the wheels of justice and the life of a free society.

There is a lot more to morality than what the laws of a just legal system contain, but these laws are certainly not without moral content. Furthermore, they even suggest several additional moral considerations, for example, the idea of individual responsibility for one's life, the virtues of prudence and courage and honesty. The affirmation of personal autonomy does not make sense without the recognition that human beings are capable of and responsible for governing themselves. □

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# The Rifle by the Door

by Donald G. Smith

*The history of liberty is the history of resistance.*
—WOODROW WILSON

Our Founding Fathers were not saints. In spite of the Fourth of July oratory that tends to put them in the holy robes of the anointed, they were not this at all; nor would I want them to be.

The truth is that the men who shaped our nation were a feisty and cantankerous lot who weren't about to play by rules they didn't like. They were uprooted Europeans who came here because they didn't like what was going on in England, Germany, Poland, Sweden, or wherever, and wouldn't put up with it. I like being the descendant of someone who walked off in a huff. There's nothing wrong with a good huff now and then.

The men who stood in ranks at Lexington Green, and forced the Declaration of Independence, and sat out that terrible winter at Valley Forge, were the kind of implacable hard-heads who made American civilization possible. These people planted the seeds of free-market capitalism.

We live with an economic system that grew from a demand for political freedom, and this is its strength. In order for it to exist, however, it had to breed in the right environment. It wasn't just our leaders who made it work but also the recalcitrant farmer who kept a rifle by the door and was prepared to go down fighting to protect his property. It was the Green Mountain Boys and the Sons of Liberty, with a healthy dollop of Molly Pitcher. These people were imbued with a strong passion for defending what was rightfully theirs, and the economic system grew out of this.

One can only wonder if capitalism can flourish, or even exist, when that environment isn't present. The newly independent Soviet republics, for example, have no tradition of private property, nor can anyone look back upon an ancestor who picked up a rifle and marched to keep government *out* of his life. It just isn't there, and we shouldn't misread the signs, because surface Westernization has precious little to do with freedom.

Our system, both political and economic, was born in the fierce and unyielding spirit of personal independence. For capitalism to succeed there must be a remnant of free-thinking, free-acting, sometimes difficult individuals who prize personal freedom above all else. This is what our system is about and why it works.

Our founders held to a philosophy of human worth and the right of an individual to function as just that—an individual. Even in our outward displays of unity, such as World War II, the driving force was individual freedom. The G.I. who stormed the beaches at Normandy was not there to die for the fatherland but to finish a war and become a civilian again. Totalitarian nations have never understood that the best fighting man in the world is the one who wants only to get back home, burn his uniform, and do something with his life.

Although we don't like to admit it, the spirit of America is the spirit of resistance, a negative force that says "I won't" more times than "I will"; "No way" more than "Yes, sir." There is a lot of Minuteman in the best of us and none of it in the worst of us—a certain irascibility that is a becoming trait when galvanized into an overall spirit built more upon the parts than the whole.

This is our heritage, America, and we should love and respect it—every crusty, ill-natured, obstinate, hard-nosed piece of it. □

*Mr. Smith, a frequent contributor to* The Freeman, *lives in Santa Maria, California.*

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# Memories of a Recession Past

by Malcolm A. Kline

This recession reminds me of the last one, when I was working in an unemployment office. President Reagan, too, had extended unemployment benefits as an answer to a recession, then extended them again, leaving the unemployed eligible to collect an entire year of benefits. Many remained unemployed for a year. While working in that Pennsylvania office in the summer of 1983, I began to wonder if there was a connection.

The unemployed apply for compensation from state agencies that process their claims and pay them their weekly benefit checks. Though funded to a great extent at the Federal level, unemployment compensation is distributed by state offices.

One of my first tasks involved learning three sets of initials—UC, EB, and FSC. UC stood for the threshold 26 weeks of unemployment compensation. Both EB (extended benefits) and FSC (Federal security compensation) were funded by the federal government. EB lasted 13 weeks, FSC another 13.

I drag in the last two acronyms because my job depended on them. We were "intermittent intake interviewers" (III's) whose salaries were paid by Uncle Sam.

The goal or standard for III's was to pay a certain level of initial claims for extended unemployment benefits, so we paid them. In fact, we had a lively competition to do so.

Our office paid benefits to, and examined the claims of, residents of the other 49 states who filed claims against Pennsylvania companies. To keep straight who was working on which state's claims, the office was divided by state signs that made it look like a political convention. Every Friday, in convention-like fashion, our supervisor announced which section paid the most initial claims. The New Jersey section, very hospitable to initial claims, usually won.

Like many anti-recession programs, the extended unemployment benefits of 1983 took effect just as the economy was turning up. Although we were nominally "temporary" employees, hired to handle a heavy claims load in a recession, many stayed on long after the recovery began, since extended benefits remained in place.

The claims load lightened considerably when extended benefits ended and still more when unemployment benefits became fully taxable, thus creating an interesting set of incentives.

"Since the availability of UI [unemployment insurance] benefits may create a disincentive to search for and accept re-employment, the UI system encourages recipients to seek work by imposing various administrative requirements," the U.S. Department of Labor told us.

"All recipients are required to be able and available for work; in most states, recipients who are not job-attached are expected to look actively for work, and they are often required to list job-search contacts when claiming UI benefits."*

Few caseworkers followed up on these "listed job-search contacts." If they did, they would discover, as I did much later, such phenomena as race horses with "Inc." added to their names. Salesmen working on commission frequently collected benefits. In taprooms and other meet-

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ing places, steelworkers spoke of unemployment compensation as "a paid vacation to go deer hunting." Claims and demands for benefits were the norm and occupied most of our time.

The exception was the Asian immigrant who mailed us a thank-you note for the two weeks of unemployment compensation she received before landing another job. She just didn't understand the system.

More predictable was the applicant who called to complain that he had to wait three hours at an unemployment office to file a claim for his weekly check and then wait another week to get it.

"You poor stiff," his less-than-understanding caseworker told him, "I've got to work 40 hours a week to collect my check!"

The addictive nature of unemployment benefits came home to me when I followed up on a letter we received. A man who worked in the print shop at *The Philadelphia Bulletin* before that newspaper folded ran out of unemployment benefits and decided to enter a seminary.

At the time, the unemployed could continue receiving benefits if they were retraining for a new position. The budding seminarian told me, "Well, you can collect benefits if you're retraining for a new position, and I figure that's what I'm doing." We denied that claim.

In Pennsylvania, every state agency is a union shop. Arrivals after 7:30 AM were frowned upon, but so were departures after 4:30 PM, since overtime had to be approved.

Two 15-minute breaks supplemented the mandatory one-hour noon lunch. The morning break came at 9:45, the afternoon break at 2:45.

One morning at 9:40, I eyed a letter requesting a telephone response. I was about to dial when I noticed the time, then said aloud, "Aw, the hell with him; it's five minutes till break."

An office veteran at the next desk said: "I'm proud of you, Malki. You're starting to think like a state employee."

That's when I had to leave. □

*A Study of Unemployment Recipients and Exhaustees: Findings from a National Survey* (U.S. Department of Labor, 1990), p. 114.

**IDEAS ON LIBERTY**

# Self-Help

It may be of comparatively little consequence how a man is governed from without, whilst every thing depends upon how he governs himself from within. The greatest slave is not he who is ruled by a despot, great though that evil be, but he who is the thrall of his own moral ignorance, selfishness, and vice. Nations who are thus enslaved at heart can not be freed by any mere changes of masters or of institutions; and so long as the fatal delusion prevails, that liberty solely depends upon and consists in government, so long will such changes, no matter at what cost they may be effected, have as little practical and lasting result as the shifting of the figures in a phantasmagoria. The solid foundations of liberty must rest upon individual character; which is also the only sure guaranty for social security and national progress. John Stuart Mill truly observes that "even despotism does not produce its worst effects so long as individuality exists under it; and whatever crushes individuality *is* despotism, by whatever name it be called."

— SAMUEL SMILES
From the book *Self-Help*,
published in 1859.

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# Unemployment and Liberty

by Benjamin Zycher

Involuntary idleness is an unpleasant experience, so it may seem absurd to speak of the "benefits" of unemployment. It often wreaks havoc with people's lives, and can impose costs upon its victims from which long-term recovery may at best be difficult.

But that is not the whole story. There is a difference between the sources and effects of unemployment as viewed by an individual on the one hand and by society as a whole on the other. To put it differently, individuals may opt for an economic system with particular kinds of unemployment that yield important benefits over time, not all of which are narrowly economic. Before a quick conclusion is drawn about unemployment, it is useful to consider its sources in a free market.

Consider first someone entering the labor force. This might be a former student looking for a first job, or a homemaker returning to the formal labor market. Should such people accept the first jobs they are offered? Or should they search for more elusive opportunities providing higher pay, greater compatibility or upward mobility, a closer fit with qualifications and interests, or other desirable features? Most people would agree that it is usually best to spend some time considering various options, but many forget that a period of unemployment may be needed to uncover the ensuing benefits.

Bear in mind also that wages and salaries under capitalism tend to reflect the value of expected productivity in alternative employments. Someone looking for a better-paying job is seeking more wealth, but whatever his motivation, he is searching for a job in which his expected productivity—his contribution to the social basket valued by others—is higher. Thus, the period of unemployment increases (the present value of) his stream of contributions to society, as measured by market prices reflecting individual preferences. Again, most would agree that this outcome is positive, but forget that a period of unemployment may first be needed. These are examples of what economists call "frictional" unemployment.

Now, the individuals described above, searching voluntarily for new or better jobs, face conditions very different from those confronting a worker suddenly handed a pink slip on a Friday afternoon. Yet strictly speaking, the two situations are identical in principle, in that the worker facing a layoff possibly could avoid unemployment and the need to search for new employment by offering to accept a pay cut. A refusal to do so, followed by an effort to find a new job, is the same analytically as the refusal of our job seekers above to accept the first available opportunity.

However, as a practical matter, not all market adjustments can be both incremental and economic. In a world of constant change, the expectations of some people are bound to be disappointed, and important among these are their (prior) decisions about jobs, careers, and training. Tragic as such outcomes are for those affected adversely, it is important to keep in mind the sources of unexpected change.

In a free market, unexpected shifts in consumer preferences can alter the value of the labor that produces various goods and services. Any attempt to blunt the effects on workers, therefore, will implicitly deny consumers the right to express

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their changed preferences. At a normative level, laid-off workers who previously displayed shifting consumer demands that caused other workers to be laid off are in no position to complain—if we agree as a society to honor individual preferences, we cannot say that they are to be honored for some but not others. Each person risks unemployment in exchange for greater expected wealth. Such economic shifts resulting from changes in relative demands and/or costs yield what economists call "structural" unemployment.

The common thread linking frictional and structural unemployment is their origin in individual liberty, to wit, the liberty of the job seeker as he balances forgone opportunities against the possibility of better options yet to be discovered, and the liberty of consumers as they choose among goods and services and therefore among the many types of labor implicitly embodied. Thus, some unemployment is both inevitable and useful in terms of other human goals.

Other types of unemployment are less salutary. Various government policies cause "induced" or artificial unemployment. Foremost among them is the minimum wage, which prevents the employment of low-skilled workers whose expected productivity lies below the legal minimum. The Social Security payroll tax, various safety and health standards, and other policies are likely to have similar unemployment effects. "Cyclical" unemployment results from macroeconomic mismanagement—in particular, excessive swings in monetary growth—by the federal government.

Once someone becomes unemployed "involuntarily," unemployment is likely to be viewed in a completely negative light. But the decision to participate in an economic system offering the benefits and risks of unemployment is a decision made before the fact, conceptually identical to deciding at the beginning of the year whether to buy life insurance. Greater expected wealth often accompanies a higher risk of involuntary future unemployment, but any person may end up with great wealth and little unemployment or with great unemployment and little wealth.

Fairness requires that people be free to choose among occupations with alternative combinations of prospective wealth and unemployment risk, and then take their chances. That not all such combinations are available is due not to the nature of capitalism, but to our existence in a world of limits. Market processes in fact offer a broad range of such choices, as many occupations offer greater security in exchange for smaller incomes. If we are to allow individuals to make choices among such alternatives, and if consumers are to be allowed to indulge their preferences, some unemployment, harsh though it is, must be seen as an adjunct of human freedom. □

# The "Fair Trade" Myth

by Shyam J. Kamath

The siren song of managed "fair" trade is once again in the air as the 1992 election nears. Cries of "buy American" fill the newspapers and TV news programs. Japan-bashing is in; free trade is out.

The common argument advanced in favor of "fair" trade is that trade deficits (excesses of imports over exports) cost American jobs. But this is a myth. Over 15 million new jobs were added between 1982 and 1989 as the U.S. ran up huge trade deficits. And the majority of these jobs paid rather well, contrary to the "McJobs" myth. Job growth was mainly in those sectors that were largely unprotected against foreign competition: computers and data processing, telecommunications, petroleum and chemicals, pharmaceuticals and health-related areas, scientific and photographic equipment, entertainment, leisure and recreation,

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hospitality and tourism, and the service industries.

Meanwhile, protectionist measures were failing to save American jobs. Quotas against Japanese autos (euphemistically called "voluntary" export restraints) imposed in the early 1980s didn't prevent the loss of over 200,000 jobs in the U.S. auto industry, and General Motors recently announced massive new layoffs. The record in steel, textiles, dairy products, shipping, and meat packing is much the same. These industries shrank while protective tariffs and subsidies were lavished on them to save jobs.

Another common myth about "fair" trade is that Japan severely restricts imports. In fact, Japan's formal and informal trade barriers are lower than those in America and other industrialized nations. For example, Japan's average tariff on industrial products was 2.9 percent in 1987, compared with 4.3 percent in the U.S. and 5.8 percent in the European Community. Nontariff barriers in Japan such as quotas and licenses were found by a World Bank study to be no more significant than those in the United States.

Japan was the world's third largest importer in 1990, taking in $235 billion worth of goods and services. Imports have grown 85 percent since 1985. In terms of imports per person, the average Japanese spent $372 on American products in 1990 while the average American spent $357 on Japanese products. During 1986-91, U.S. exports rose by 91 percent, while Japan's exports grew by only 17 percent. American exports to Japan were especially strong during this period, doubling to $46.1 billion by the end of 1990.

In fact, it can be argued that the United States is the unfair trader. James Bovard points out in *The Fair Trade Fraud* (reviewed on page 282 of this issue) that America has over 8,000 tariffs, 3,000 clothing and textile import quotas, and a variety of quotas and other nontariff barriers for steel, autos, sugar, dairy products, peanuts, cotton, beef, machine tools and other industrial products. For example, America limits imports of ice cream to the equivalent of one teaspoon per person each year, and foreign peanuts to two per person. Such restrictions reduce competition, raise prices, decrease variety, and cost American consumers $80 billion per year, or $1,200 per family.

The strongest argument against "fair" trade is the existence of globally integrated multinational corporations such as IBM, AT&T, and Procter & Gamble, and the interdependence of the inhabitants of our "global village." It is estimated that over 40 percent of world trade is carried out by more than 2,000 multinational corporations that have no national identity and that produce and distribute through a globally integrated network. Today, anyone wishing to "buy American" may have to buy a car with a nameplate like Honda or Mazda rather than Chevrolet, Dodge, or Ford.

Logic and hard evidence dictate that we resist the calls for "fair" trade if we wish to maintain and enhance our standard of living in an interdependent world. Free trade is still the best option for promoting American prosperity. "Fair" trade can only lead to an ever-escalating cycle of retaliation and counter-retaliation, putting the world trading system at risk. Our future depends on keeping our borders open and the goods and services flowing. □

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# Student Activity Fees

by Thomas C. Klein

A report in *Insight* magazine recently revealed that the City University of New York (CUNY) student government incurred the following expenses: $13,011 for car service, $24,000 in salaries for the sister and close friend of the student senate chairman, $2,209 for an electronic beeper service, and $49,000 for a lobbying trip to Albany to convince legislators not to raise tuition. The expenditures are funded by an 85-cent per semester student activity fee.

When I attended Swarthmore College from 1981 through 1985, I paid a $60 semiannual activity fee to fund various clubs, societies, newsletters, and campus organizations. Thirteen hundred other students paid the same mandatory fee.

The sum collected—$78,000 per semester—was placed in an account and disbursed by a five-person Budget Committee. If a group of students formed a new organization, gained approval from the dean of students, and obtained a faculty adviser, they could petition the Budget Committee for funds. Each club, society, newsletter, and organization petitioned the committee at least once each semester to secure an operating budget. After holding hearings, the committee would allocate money to the Movie Society, the Mountaineering Club, the Take-a-Professor-to-Lunch Program, the Women's Center, the Asian Students Society, the Christian Fellowship, the Young Americans for Freedom, and other campus groups.

During my undergraduate days at Swarthmore, I circulated the idea among my acquaintances (one of whom was on the Budget Committee) that the committee be abolished and the mandatory student activity fee not be collected. Instead I reasoned, "Let each individual student speak to his friends and acquaintances, decide what interests they have in common, and see how much money they would like to devote to their common interests."

When I attended the University of Chicago Law School from 1986 through 1989, I again suggested that mandatory fees be eliminated in favor of a system based on individual choice.

When defending my idea at both schools, I was faced with questions such as: "Who will pay for the movies shown every Saturday?" "How will the school maintain the diversity of clubs and organizations?" "Who will support the school paper?" "What if a student just spends his $60 on beer?"

I answered each question in turn, often defending my program to groups of students hurling questions at me. I stated that the principal point was to respect each individual's freedom of choice over his own property. Each of us had relinquished this freedom under the system of centralized planning through the Budget Committee.

I then addressed each empirical question as it was raised: The movie club will charge admission so that only those who attend will pay for movies; the diversity of clubs will be a function of actual interest and how much each individual decides to pay for his participation—certain clubs may fail for lack of support, others may come into existence; the school paper will have to support itself through advertising, alumni contributions, subscriptions, and single-copy sales instead of through the current hidden tax on each student; if a student spends his money on beer, that is his own free choice, no matter how others may view it.

My answers generated many questions and much discussion. Luckily, I found support for my views from one of the economics professors at Swarthmore College and from like-minded students at both Swarthmore and the University of Chicago.

Unfortunately, funding centralization continues at Swarthmore, the University of Chicago, CUNY, and other college campuses. I hope that through the communication of the ideas of liberty, and perhaps by the central planners' own missteps, such programs can be rooted out to allow freedom to flourish. □

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# Do Seat Belt Laws Work?

by John Semmens

Many states that have passed mandatory seat belt-use laws have required that evidence of the law's effectiveness be produced for the law to escape automatic expiration. A recently published report—"Arizona Hospital Costs for Seat Belt Use vs. Non-Use 1989, 1990, 1991"—from the Governor's Office of Highway Safety purports to be the needed evidence for the extension of Arizona's seat belt law. Unfortunately, these kinds of reports have neither asked nor answered the right questions.

Proving that people suffer more severe and expensive injuries when they're not wearing seat belts belabors the obvious. No credible opponent of seat belt laws has disputed that seat belts can save wearers from death and injury. To present statistics that never were in doubt as the long-awaited evidence fails to deal with the unresolved issue of whether requiring seat belt use is good public policy.

Critics of seat belt laws have contended that they alter driver behavior in ways that increase the hazards for other users of the streets and highways. In particular, some drivers wearing seat belts may feel more assured of surviving an accident, and hence tend to drive more aggressively, thus raising the risk of collisions with other vehicles and pedestrians.

In the early 1970s, a few challenges to the presumed safety benefits of increased auto safety regulations appeared in lightly read academic journals. In a 1970 issue of *Applied Economics*, L. B. Lave and W. W. Weber suggested that mandated safety devices (seat belts, better bumpers, collapsible steering wheels) might lead to faster driving that could offset the safety gains. In 1975, Sam Peltzman's "The Effects of Automobile Safety Regulations" in the *Journal of Political Economy* hypothesized that safer autos would lead to more aggressive driving that would endanger other users of the roads.

This earlier research has been mostly ignored or dismissed in favor of adherence to more simplistic research that, unsurprisingly, proves that crash-test dummies suffer more damage without safety devices. Crash-test dummies, of course, cannot have their driving behavior altered by a perception of greater crash survivability. Consequently, the research with dummies doesn't refute the hypothesis that driver behavior might be changed and thus negate or reduce some of the anticipated safety gains.

The plausibility of the aggressive driver hypothesis cries out for more research. For example, Hawaii, the state with the most rigorously enforced seat belt law and the highest compliance rate in the nation, has experienced an *increase* in traffic fatalities and fatality rates since its law went into effect in December 1985.

This is not to say that the seat belts are killing

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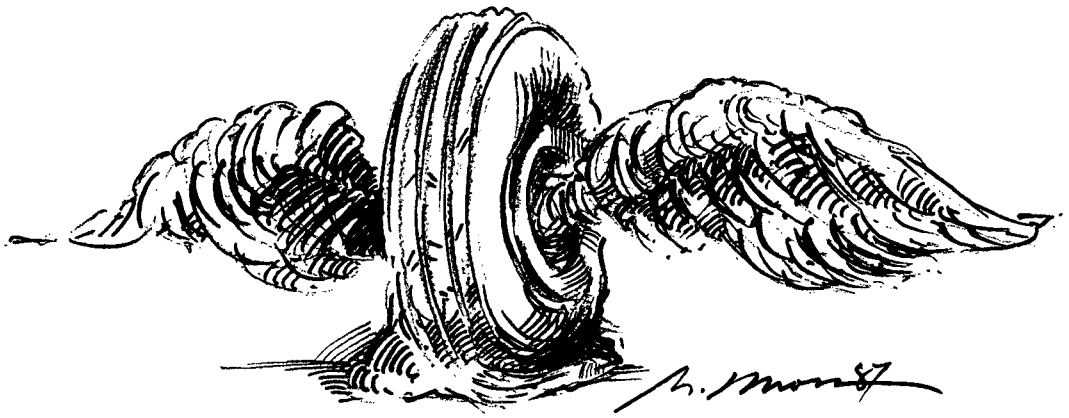

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vehicle occupants. Clearly, enough crash-test dummies have smashed into enough auto windshields and dashboards to convince all but the most obstinate that wearing a seat belt is probably a good idea. What, then, is going on in Hawaii? Well, we don't know. But the data do not support a smug assurance that forcing people to wear seat belts is without potential undesirable outcomes.

A recent statistical study of states with and without seat belt laws was undertaken by Professor Christopher Garbacz of the University of Missouri-Rolla. This study seems to support the altered driver behavior hypothesis. Dr. Garbacz found that states with seat belt laws saw decreases in traffic fatalities for those covered by the laws (typically drivers and front-seat passengers), but increases in fatalities for rear-seat passengers, cyclists, and pedestrians. Further, the patterns of changes in total traffic fatalities among the states showed no consistent relationship with the existence of a seat belt law in the state.

This suggests a significantly less optimistic interpretation of the impact of seat belt laws than the prevailing orthodoxy would allow. Forcing unwilling motorists to wear seat belts may save their lives and reduce their injuries. Disconcertingly, though, seat belt laws appear to be increasing the hazards for other users of the roads.

Deciding whether this apparent shift in risk is an acceptable cost of a seat belt law is a far different proposition from pretending that there is no significant cost. Policy-makers may be satisfied that the benefits of a seat belt law outweigh the costs. However, a humane public policy demands that those who may ultimately pay the costs be warned of the potential increased risks they face on the streets and highways. To do less is to endanger some of the least protected users of our roads. □

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# BOOKS

**THE FAIR TRADE FRAUD: HOW CONGRESS PILLAGES THE CONSUMER AND DECIMATES AMERICAN COMPETITIVENESS**

by James Bovard

St. Martin's Press, 175 Fifth Avenue, New York, NY 10010
1991 • 330 pages • $24.95 cloth

*Reviewed by Raymond J. Keating*

Author James Bovard sets the tone for this book by declaring at the very outset, "Fair trade is a moral delusion that could be leading to an economic catastrophe." The remaining pages supply reasoned, empirical support for such a claim.

Bovard launches a relentless attack against protectionism masked as "fair trade." He mercilessly exposes politicians' moral posturing on fair trade as being nothing more than pedestrian concerns over campaign funding and re-election. More important, he illustrates why the concept of fair trade damages both U.S. consumers and producers. He manages to combine a seemingly inexhaustible supply of supporting statistics, studies, and anecdotes with a razor-sharp pen, making this not only a formidable contribution to the trade debate, but a thoroughly enjoyable book.

Bovard illustrates how "fair trade" works against low prices, voluntary agreement, competition, and "the economic values of private citizens," in favor of high prices, government coercion, state-protected business, and "the moral and political values of federal policymakers." The concept of fair trade set the stage for Congress to "dictate over 8,000 different taxes on imports, with tariffs as high as 458%," the imposition of trade barriers "costing American consumers $80 billion a year—equal to over $1,200 per family," and, in general, the impediment of economic growth by redirecting "capital and labor from relatively more productive to relatively less productive uses." The fundamental Ricardian concept of comparative advantage eludes our elected officials.

Bovard examines the various fair-trade weapons used to wage economic warfare, and their commensurate costs. His description of tariffs is both clarifying and deliciously sardonic: "In the 1400s in Europe, wealthy nobles could go to Rome and purchase a Papal decree officially forgiving their most flagrant sins. Nowadays, American industries go to Washington to 'atone' for their economic mistakes by purchasing an exemption from foreign competition. A tariff is simply a decree from Congress officially forgiving an industry for all its economic sins—its incompetence, mismanagement, lethargy, contempt for its customers, and so on. If the tariff is set high enough, Congress' economic holy water will wash away all of a company's earthly failings." Bovard notes, for example, that American food producers have gained over 500 tariffs on foreign food, and he decries that policymakers apparently believe that "it is better that the poor go hungry than to allow them to eat foreign food."

Import quotas, according to Bovard, "epitomize the subjugation of economics to politics" under the presumption that "no private contract is as important as the government's master scheme to control supply." A revealing example of Congress' notion of fair trade deals with ice cream: "The U.S. exports hundreds of thousands of gallons of ice cream to Canada, yet Canadian ice cream is banned from the U.S. market." Furthermore, the "USDA [United States Department of Agriculture] estimates that dairy import quotas, price restrictions, and marketing restrictions cost American consumers between $5 and $7 billion per year. This amounts to over $50 billion in higher consumer costs since 1980, or roughly $800 per American family. For the same amount, each American family could have bought its own cow."

Accusing foreign firms of "dumping" is another protectionist weapon wielded by fair-traders, and it is perhaps the most fraught with arbitrary bureaucratic and politically motivated rhetoric. Bovard observes: "Dumping law exists to prevent foreign companies from selling goods in the United States at 'less than fair value.' What is less than fair value? The Commerce Department's creative definitions have probably made many medieval scholastics smile in heaven."

The Commerce Department's arbitrary determination process is perhaps best summarized by the following: "After Commerce estimates the cost of production and adds 10% overhead [even if the firm carried lower overhead costs], Commerce adds 8% profit to achieve the total 'con-

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structed value' of the foreign product. If a foreign company earns a profit of 7%, Commerce will punish the company for selling at a loss of 1%." Under such malleable criteria, dumping cases almost always result in penalties being levied on foreign firms . . . and U.S. consumers. One might say that all is fair in a trade war.

Bovard debunks other fair-trade myths, such as subsidies, the notion of reciprocity, and the so-called "level playing field." The damage to the consumer from the imposition of protectionist measures is clear. Bovard expounds upon the many costs, showing how current trade policy "punishes American consumers for the alleged sins of foreign governments."

Bovard goes on to point out how American industry is harmed by such measures. First, U.S. competitiveness suffers as imported inputs are restricted or taxed, thereby raising the costs and often lowering the quality of American products. Second, and more fundamental, "The fewer trade barriers the U.S. has, the more competitive American companies will be. The fewer crutches the government provides, the faster American industry will run."

*The Fair Trade Fraud* should enrage American consumers, and cause many Congressmen to hang their heads in shame. Bovard declares, "The history of American trade policy vivifies the perennial economic illiteracy and moral irresponsibility of the U.S. Congress." Perhaps our Federal representatives should be assigned this book for their acts of contrition. They just might learn some basic economic principles about the benefits of free trade. □

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**THE IMPOSSIBLE H. L. MENCKEN: A SELECTION OF HIS BEST NEWSPAPER STORIES**

edited by Marion Elizabeth Rodgers

Doubleday, 666 Fifth Avenue, New York, NY 10103 • 1991
707 pages • $27.50 cloth; $14.95 paper

*Reviewed by Edmund A. Opitz*

Reading Mencken cleanses the mind of cant and drivel, raises the blood pressure, and starts the adrenaline pumping. He may move us to furious dissent or cheerful agreement, but no one reads him unmoved. He may leave us battered, our pride wounded; but we love the way he slaughters the Amalekites and Agag their king! It's not just the man's virtuosity with words, although few equal him as a literary stylist; nor is it his erudition, although it is obvious that he is genuinely learned and widely read. What makes Mencken unique and indispensable is his independent stance; he wore no man's ring in his nose. And he was fearless; no sham was off limits to his barbs, no hypocrite was immune.

Mencken never catered to any party, faction, or clique; he was not swept up into any of the popular and passing idiocies of his day; he did not bend the knee to any of our tribal idols, nor worship at the shrine of the *Zeitgeist*. "He approached everything with a mind unclouded by current opinions. There was nothing of the superior person about him. This makes him terrifying." These words aptly characterize Mencken, but they were written to define William Blake, quoted from T. S. Eliot's essay on the English artist and poet. Now, Blake and Mencken were about as different as two people can be, but both belonged to the same rare breed of *Homo sapiens*—an order composed of men and women who are completely themselves: no echoes allowed. May their tribe increase!

Democracy, in its corrupt version, operates under the pretense that every man is just as good as any other—or a little better. The corresponding ethos lays down a smoke screen behind which cavort a gaudy troupe of impostors, quacks, and charlatans. Mencken spotted them in academia, in ecclesia, and in the media; they flourished in literary circles and enjoyed a prodigal growth in politics.

The politicos of Mencken's day were his primary target; he had at them with every weapon in his amply stocked arsenal. He was a shrewd reporter whose high-voltage prose matched his outrage. He was utterly honest and impartial, albeit a bit cruel when the occasion seemed to demand it. The mountebanks in public office were not, after all, harmless clowns; they were men with power preying on the multitudes of people who lacked the means to defend themselves.

But Mencken also criticized the masses for their apparent willingness, nay even eagerness, to be bamboozled. Aware that the game was crooked, they played on, believing it was the only game in

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town. They compromised their innocence by clinging to the airy hope that a turn of events would put them in a position to do their own swindling.

Mencken used the word "democracy" in its two different senses: on the one hand as descriptive of a society of liberty and justice for all; on the other, as a label for the political racket which exercises public power for private gain—pretending, all the while, to be The People's friend. The closing sentences of his short book, *Notes on Democracy*, give us a glimpse of his thoughts on the matter. Referring to those who are shortchanged in the political scuffle he writes: "What I can't make out is how any man can believe in democracy who feels for and with them, and is pained when they are debauched and made a show of. How can any man be a 'democrat' who is sincerely a democrat?"

Mencken had a number of friends in public life: senators, congressmen, judges. From his early days as a reporter he was on good terms with the ward bosses who haunt smoke-filled rooms, and the ward heelers who lurk around the seamy edges of society. Tammany types might serve a useful role in those nooks and crannies where the rules do not fit with precision. It was not the "honest imbecility" of the average politico that sent Mencken's temperature up to 103. What brought him to the boiling point was the do-gooder, the right-thinker, the forward-looker in politics—"the resilient, sneaking, limber, oleaginous, hollow and disingenuous [fellow, who purveyed] . . . an idealism that is oblique, confusing, dishonest and ferocious." In other words, Boss Tweed was bad enough, but the New Deal was worse!

This huge tome contains roughly half a million words of Mencken's writing for the press, sparked by some transient event, turned out under pressure, and somehow transmuted by Mencken's genius into absolutely brilliant prose. And of course the style is all his own. The pace never falters; there's always the odd or unusual word which clicks precisely into the right spot; the argument never wanders—except when dealing with some egregious cad or crook, when the *ad hominem* mode jumps in.

Mencken avers that democracy is the most entertaining form of government ever invented. He shares the fun with readers of this book in 172 pages of his reports on eight of the national political conventions he covered from 1904 to 1948. His sprightly manner conveys much political savvy as well.

We get his views on food, women, "literary gents," the American language, and music—the last especially in his essays on Bach, Brahms, and Beethoven. If his two paragraphs on Beethoven's *Eroica* do not double your enjoyment of this colossal masterpiece, read his other essay on the *Eroica* in his *Chrestomathy*. Or demand your money back!

Mencken is a man eminently worth knowing, and there's no better way to make his acquaintance than by poring over this wonderful collection. What kind of a man will you be taking unto yourself? Hear the report of one of his friends, Albert Jay Nock: "At dinner last night with Henry Mencken at Luchows. . . . There is no better companion in the world than Henry; I admire him, and have the warmest affection for him. I was impressed afresh by his superb character—immensely able, unself-conscious, sincere, erudite, simple-hearted, kindly, generous, really a noble fellow if ever there was one in the world."

A couple of men like this in every generation, and we need not despair of the Republic. □

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**FORBIDDEN GROUNDS: THE CASE AGAINST EMPLOYMENT DISCRIMINATION LAWS**

by Richard A. Epstein

Harvard University Press, 79 Garden Street, Cambridge, MA 02138 • 1992 • 530 pages • $39.95 cloth

*Reviewed by Jeffrey A. Tucker*

Contemporary political culture tolerates two positions on civil rights. The first position says approved minorities need expanded "rights," which really mean privileges and quotas in hiring, mandated benefits, and high taxes to pay reparations for past injustices. This view is held by a wide spectrum of the political left.

The second position challenges this by arguing that minority rights were necessary in the 1960s, but in recent years the quest for equality of economic opportunity has been transformed into

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equality of result, and this betrays the original vision of civil rights. This view—that modern civil rights laws are great but have been taken too far—is advanced by neo-conservatives in an unending parade of opinion columns and books.

Richard Epstein, in this new book, overthrows both perspectives. Breaking out of political orthodoxy, he argues: Anti-discrimination laws have not only gone too far, they should all be repealed as capricious, expensive, wasteful, and destructive of economic freedom. His radical thesis appears in what may be the most comprehensive and systematic treatment on various forms of discrimination yet to appear.

Epstein, a law professor at the University of Chicago, is one of the finest legal scholars of our time—and for his willingness to argue this view, he also becomes the most Politically Incorrect. If this book is treated justly, it will forever change the terms of debate on civil rights.

But can Epstein be right? Are modern civil rights laws fundamentally flawed? The heart of the Civil Rights Act of 1964 is Title VII, which prohibits discrimination on the grounds of race, color, religion, sex, or national origin. At the time of passage, Senator Hubert Humphrey said the act would strike a blow for merit and against prejudice. And he promised on the Senate floor that it wouldn't lead to quotas, or he would "start eating the pages" of the bill. He was, of course, completely wrong, and opponents of the act were correct. The act ended up striking a blow against merit and for state-mandated hiring quotas.

The act not only covered hiring. That would have left too much room for evasion by businesses. Instead it created a new set of laws regulating private decisions that were once left to the market: promotion, wages, and even job assignment. The civil rights bureaucracy now controls even micro-details of labor market transactions that harm business and make economic relations less peaceful than they were before 1964.

But how was this engendered by Title VII, which simply prohibits certain criteria from being used to discriminate against minorities? Epstein's argument is simple and profound. Title VII is actually a law against acting with certain motives in mind. Yet it is difficult to legally prove motivation. You need a smoking gun, as when an employer hangs a sign saying, "Blacks, Jews, and Women Need Not Apply" (or "Whites, Christians, and Men..."). The government could easily prosecute the employer who displayed such signs. But once the Civil Rights Act passed, no employer displayed obvious evidence of illegal discrimination. Employers began to claim all decisions were made on merit.

But how can regulators know for sure? The government and interested private parties then looked for other forms of objective evidence of discrimination. The easiest way was to look at the numbers: Why are there so few blacks and women in this firm? How many have been turned down recently? How come they are not being paid "enough" or advanced fast "enough"? Is the claim of merit just a pretext for discrimination? The government began to distrust the motives of every employer in the country.

The employer's only protection against this game was to hire on the basis of race, sex, and national origin—the very thing prohibited in Title VII—as an effort to avert prosecution. The result of the Civil Rights Act is the plethora of minority privileges we know too well. Nowadays, if courts say a hiring test uses criteria not essential to the job, and effects a "disparate impact" on minorities, it is illegal. Even literacy tests have been deemed discriminatory, which means they must be "race-normed." "Merit" is a fine criterion, so long as it is minority-friendly.

The net effect of Title VII on minorities in labor markets has been to increase the risks and costs of hiring them. Employers skim off the cream of the minority labor force, rewarding, for example, well-educated, high-skilled blacks at the expense of poorly educated and low-skilled blacks. And the non-minorities that are excluded or passed over for promotions are getting increasingly angry.

Such are the results of attempts to plan the private economy. The constitutional legitimacy of civil rights derives entirely from a New Deal tradition that views the commerce clause as an open invitation to any and all invasions. Once the premise is granted that the government can interfere with private market transactions, and reward some people at the expense of others, it follows that the same can be done with the freedom to contract in employment.

Today, courts and government agencies use standards that are so complex as to be incomprehensible to average businessmen. Epstein's extended discussion of the evolution of anti-

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discrimination rules brings to mind the pricing methods of Soviet bureaucrats. Indeed, he argues that civil rights are a form of central planning which accepts all the assumptions of the more extreme variety practiced by the Soviet Union.

In short, the critics of the Civil Rights Act of 1964—often derided as bigots and racists—were really prophets who pointed to what the act would eventually mean for the freedom of contract. "The fears of the diehard opponents of the statute," writes Epstein, "have proved correct." He drives home the lesson that government invites social trouble when it uses motivation ("forbidden grounds") as the dominant test of legality.

Epstein presents a challenge to free-market advocates. They have usually argued that the market discourages discrimination by making bigots and sexists pay a premium for favored workers, even as competitors clean up on employees passed over. But Epstein finds this argument weak. In consumer markets, one person's money is as good as another's. But in labor markets, a contract implies a long-term commitment to the culture of the firm. The employer must use proxies to forecast the long-term compatibility of new employees. Moreover, a homogeneous work force can often increase the efficiency of the firm by making a uniform ambience easy to achieve.

Epstein says we should face the cultural and sociological fact that people's preferences—and thus the actions of economic agents—will tend to sort themselves into groups defined by common characteristics. One example is language. A restaurant exclusively serving Chinese-speaking customers will not do well with Spanish-speaking waiters. There are reasons for culturally homogeneous workplaces: "the music played in the workplace, the food that is brought in for lunch, the holidays on which the business is closed down, the banter around the coffeepot, the places chosen for firm outings, and a thousand other small details that contribute to the efficiency of the firm."

Is this tendency toward intra-firm homogeneity unfair? Does it violate anyone's civil rights? No, says Epstein. Discrimination is a part of the division of labor, and there is no need to impose one model of fairness on the entire economy. "The partition of the market into specialized and well-defined niches should increase the satisfaction of all consumers. *Any* anti-discrimination law cuts against that commendable objective." Which is not to say diversity doesn't have its advantages. But the proper mix of homogeneity and diversity in the work force cannot be known before experience. Epstein asks us to give up egalitarian assumptions and let the market distribute labor resources as it sees fit.

Civil rights advocates have oversimplified the world, he says. They assume that millions of employers have "some fundamental psychological block to their own visions" which makes them act irrationally. In fact, private parties know better than government what is socially peaceful. "Unless and until the contract in question poses the threat of harm to third parties . . . or is procured by fraud or sharp practice, then each person is his or her own best judge both of the private costs incurred by contracting and of the private benefits obtained from the contract. Individuals have the best knowledge of their own preferences and have the strongest possible motivation to make the best deal for themselves."

The point is to move away from collective decisions to private ones. As Epstein puts it, "the way to resolve the fundamental social disagreement is not to have a knock-down, drag-out moral fight"; it is "to allow people to go their separate ways."

This would not end affirmative action and quotas, which, he argues, are only destructive when mandated by the government. If the Civil Rights Act of 1964 and all subsequent legislation were repealed, companies could and would practice a wide variety of race and sex privileges. "The level of affirmative action or the extent of quotas should be regarded as an internal affair of the firm, and never as the affair of the public at large or the state," he writes. Economic efficiency and public attitudes would keep firms in check.

Here is a case in point. A friend of mine owns a business in Richmond, Virginia, and he is paralyzed by the threat of civil rights suits. Being liberally minded, he wants to practice private affirmative action, hiring blacks over more qualified whites. But he can't do it because if he also fires blacks, he takes the risk of expensive lawsuits. Repeal civil rights laws, and, if he so chooses, he could hire an all-black work force.

*Forbidden Grounds* also covers sex discrimination, even delving into sociobiology to show why substantial work-related differences between men and women always will be with us. And it refutes the need for anti-discrimination laws for recently

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approved victims: the aging and the disabled. His case persuades.

Epstein's astonishing, tightly argued, 530-page legal and economic treatise is a call to rethink the most explosive issues in American political culture. Let the debate begin. □

*Jeffrey Tucker is a fellow of the Ludwig von Mises Institute.*

**THE LITIGATION EXPLOSION**
by Walter Olson
Truman Talley Books, Dutton, 375 Hudson Street, New York, NY 10014 • 1991 • 350 pages • $24.95 cloth; $13.00 paper

*Reviewed by William Tucker*

Did you know that if your spouse sues you for divorce, you can find yourself in the private company of his or her lawyer under legal obligation to answer any and all questions about your sex and private life?

Did you know you can volunteer to help put together a jungle gym at your child's school and find yourself being sued for several hundred thousand dollars worth of "pain and suffering" if a child later breaks an ankle on the set?

Did you know that the standards of evidence in civil trials have been so relaxed that you can be held liable for hundreds of thousands of dollars in damages on the basis of evidence that would be inadmissible in a criminal courtroom?

In this amazing book, Walter Olson documents what the "war of all against all" will eventually be like. On that day when the last pretense of civilized restraint and mutual forbearance has given way, everybody will be a lawyer.

What is most remarkable—and certainly not widely known—is how different American law has become from that of the rest of the world. In all places and at all times, certain restraints have been placed on lawyers to prevent them from using the courtroom as their private racquetball court. In some places the restraints are external—the "English rule" of civil cases, for example, which requires the losing side to pay the winner's attorneys fees and keeps going-to-court from becoming a risk-free sport. In other times and places, it has been the codes and traditions of the bar itself that have prevented lawyers from litigating on their own behalf.

In America, however, all those restraints have now gone by the boards.

Take the process of "discovery." Although now widely practiced, it is actually only about four decades old and completely unique to American law. Anywhere else, you must sue someone on the basis of specific evidence that you present when you go to court. Under "discovery," however, you can make vague and unspecified charges and then summon the defendant's entire personal and private records, fishing for evidence. Discovery has become an essentially unlimited right to private search and seizure.

Or take depositions. Once they were limited to extreme circumstances—if a key witness were on his death bed, for instance. Yet gradually, the lawyers persuaded the judges that lawsuits would resolve themselves more quickly if lawyers had better access to information. The result was an essentially unlimited power to hold private interrogations. If someone sues you today (or even if you are a third-party witness), you must sit in a private deposition with the opponent's lawyer, under legal obligation to answer any and all questions. Your only recourse is to bring your own lawyer at your own expense. Even if the case is never pursued, you're stuck with the legal fees.

Although the law schools constantly turn out charming rationalizations for all this—and the judiciary is usually willing to accept them—there is only one real explanation: It is hugely profitable for plaintiffs' attorneys. The entire plaintiff bar has become a swarm of "private attorneys general" inventing new wrongs such as "jobs stress injury" or "clergy malpractice," scouring the countryside for alleged victims, exacting huge "punitive" damages from deep-pocketed quarry, while keeping almost half the proceeds for themselves. If the insurance companies begin to groan under this new weight, so what? Let the government take over insurance—that will only make the pot bigger.

The truly amazing thing about all this is that at the exact same time the rules of civil procedure were being loosened beyond all previous measure, the criminal code was being tightened to the point of absurdity on behalf of criminal defendants.

Only a few years ago, for example, the U.S. Supreme Court ruled that a police officer had vio-

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lated a burglar's constitutional rights by turning a television set to read the serial number after legally entering the burglar's apartment and finding it stashed with stolen goods. Yet at the same time, discovery proceedings were being opened up so that plaintiff attorneys have almost unlimited access to the personal and business records of civil defendants. The Miranda restrictions on confessions were wheeled into place at precisely the same time that civil attorneys were being given almost unlimited powers to grill people in depositions. And hearsay restrictions were being tightened in criminal proceedings just as they were being almost completely eliminated in the civil courtroom.

What is the explanation? The answer is simple. In criminal proceedings, lawyers make all their money on the defense side. Public prosecutors make little more than high school teachers, while successful defense attorneys pull down six- and seven-figure salaries. On the civil side, however, it is the plaintiff attorneys who are the high rollers. Defense attorneys have certainly benefited from the litigation explosion, but they are not pursuing multi-million-dollar jackpots. They make their money by the hour.

As Olson summarizes it succinctly: "It took centuries of struggle against arbitrary authority to establish the civil-liberty safeguards that protect criminal defendants from being railroaded to punishment. Today the forces of irresponsible accusation have turned instead to the civil law, which they like better anyway because they get to keep the proceeds. . . . America is now reaping the harvest of a strange and ill-considered experiment in the legal system. We have deputized our immense professional body of lawyers to stir up grievances for profit." □

*William Tucker is author of* The Excluded Americans: Homelessness and Housing Policies, *winner of the 1991 Mencken Award for best public policy book.*

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# Join us in the pursuit of an ideal.

The ideal of freedom is to let anyone do anything he pleases, as long as his behavior is peaceful, with government empowered to keep the peace—and nothing more. An ideal objective, true, but one that must be pursued if we would halt the continuing descent of our society from bad to worse. Nothing short of this will suffice. And unless we fully understand the ideal—and what makes for its attainment—we'll tend to settle for powerless, futile little pushes and shoves that yield no more than a false sense of something done.

—Leonard E. Read

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—THOMAS JEFFERSON
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